# City of Lafayette Staff Report

**For:** City Council

**By:** Christine Sinnette, Senior Planner

**Date Written:** July 21, 2008

**Meeting Date:** July 28, 2008

**Subject:** **MS504-87CCII – ROBIN AND KRIS LEAMY (APPLICANTS & OWNERS), R-40 ZONING**: Request for a minor subdivision to divide 19.23 acres into three lots for residential development pursuant to Chapter 6-20 and Chapter 6-30 of the Lafayette Municipal Code (LMC), located at 4123 Happy Valley Road, APN 247-010-019 and 020 ("Project"). City Council review and consideration of a supplement to an environmental impact report, the Project, and conditions of approval.

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## EXECUTIVE SUMMARY

Application MS504-87CCII was originally proposed in 1987. Review of the original subdivision application in 1987 included the preparation of an environmental impact report (EIR). A Final EIR was certified by the Planning Commission in 1988 even though the application was ultimately denied by the City Council. The application was re-activated as a 3-lot subdivision by new property owners in 2005. In 2006 and 2007, the Planning Commission and City Council considered MS504-87CCII and an Addendum EIR.

In August 2007, the application was put on hold pending the outcome of additional geotechnical studies. The studies confirmed that a previously identified landslide encompassed a larger area than originally thought and the applicants revised the project to include the repair of the larger landslide area. Because the project now includes more remedial earthwork, the City determined that a supplement to the previous Final EIR should be prepared rather than an Addendum. A supplemental EIR (SEIR) was completed on June 10, 2008. The Planning Commission held a public hearing on the project, SEIR, and draft conditions of approval and recommended that the City Council adopt the SIER and approve MS504-87CCII and the conditions of approval. Staff is recommending that the City Council conduct a public hearing, consider the SEIR, the project, and conditions of approval, and continue the matter to the meeting of August 11, 2008.

## PROJECT HISTORY

In 1987, property owner John Barsell submitted a minor subdivision (MS504-87II) for a subdivision of 18.2 acres into three lots[1] with access from Happy Valley Road. This application was denied by the City Council on June 12, 1989. While there were other concerns and unresolved issues, the principal reason for denying the subdivision was a problem with safe access. The property owner, John Barsell, filed a

[1] Parcel A – 2.55 acres, Parcel B – 13.82 acres, and Parcel C – 2.34 acres

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lawsuit and in February 1990, the Superior Court remanded MS504-87 back to the City Council to consider a revised access known as the "gate approach"[2]. The City Council finally heard MS504-87II again on October 13, 1992 and denied the subdivision. Mr. Barsell petitioned the Council for reconsideration of the denial on October 20, 1992. In order to avoid the cost of further litigation and to resolve the dispute over the subdivision application, the City and Mr. Barsell entered into a Mutual Compromise Settlement and Release Agreement (Agreement). See Attachment C.

Pursuant to Term 1 of the Agreement, the City Council held a public hearing on July 25, 1994 to reconsider its 1992 denial of the subdivision. By a vote of 5-0, the Council preliminarily approved the subdivision[3] subject to the following conditions:

1. That the intersection at Happy Valley Road shall comply with the Caltrans standards for site distance for traffic traveling at 25 miles per hour.

2. That an encroachment permit shall be obtained from the City of Orinda.

3. When the encroachment permit is obtained, that the matter be brought back to the Planning Commission for review and development of appropriate conditions at a public hearing with a recommendation to the City Council.

4. The City Council will make the final decision on the subdivision application.

In July 2004, Barsell submitted an encroachment permit application to the City of Orinda. An encroachment permit (06-130) was subsequently issued by Orinda which included improvements to the Happy Valley Road right-of-way. The improvements have been completed and accepted by the City of Orinda. Since conditions 2 and 3, above were met, the minor subdivision was re-activated in 2005 and staff followed the City Council directive to prepare conditions of approval for MS504-87CCII for review by the Planning Commission.

On December 7, 2006, the Planning Commission held a public hearing on this project including the review of an addendum to a final environmental impact report (AEIR) and draft conditions of approval. The Commission had no specific comments on the AEIR and requested revisions to the conditions of approval. At their meeting of February 1, 2007, the Commission finalized the conditions of approval and AEIR and forwarded them to the City Council. See Attachment B – Planning Commission minutes.

After the February 1, 2007 Planning Commission meeting, it was decided that due to concerns about the scope and adequacy of the applicant's geotechnical reports, that a peer review of the geotechnical reports and comment letters from the public should be conducted. The City contracted with Alan Kropp & Associates, Inc., geotechnical engineers. Alan Kropp & Associates (AKA) conducted peer reviews for the City during preparation of the 1988 FEIR. The City Council reviewed the project, the recommended conditions of approval, and the AEIR at their meeting of April 23, 2007 but made no determination on the project because the peer review had not been completed. See Attachment C – City Council minutes. The matter was eventually removed from the City Council agenda pending completion of additional geotechnical studies.

Supplemental geotechnical studies completed by the applicant noted that a previously identified landslide encompassed a larger area than originally thought. Since new geotechnical information was now available and the project was revised to include the complete repair of two on-site landslides, staff

[2] The access shown on the current plan.
[3] Tentative Plan Subdivision MS504-87, prepared by Schell and Martin, Inc., dated received June 1, 1992

determined that a Supplement to an EIR (SEIR) should be prepared rather than the Addendum. A Draft SEIR was prepared by City staff addressing the current plan. A public hearing before the Planning Commission on the Draft SEIR was conducted on June 19, 2008. See Attachment D – Planning Commission minutes. The Draft SEIR, project, and proposed conditions of approval were reviewed by the Commission and the matter continued to their meeting of July 3, 2008. At the July 3 meeting, the Commission approved by a vote of 4-0-1 (Mitchell recused) a motion to forward a recommendation to the City Council to: 1) Adopt the supplement to an environmental impact report and mitigation measures contained therein; and 2) Approve MS504-87CCII and the conditions of approval.

## PROJECT DESCRIPTION

The subject property is now owned by Robin and Kris Leamy. Parcels A, B (former Parcel D), and C continue to be 2.55, 13.82, and 2.34 net acres, respectively. However, unlike the previous owner, the new owners are only proposing a three-lot subdivision and wish to retain Parcel B for their residence. The only changes from the 1992 tentative plan are a slight realignment of the interior access road and conservation easement to better conform to the topography and the shifting of a proposed homesite on Parcel A. The conservation easement has been increased from 259,148 square feet to 259,258 square feet and now includes the riparian vegetation at the upper end of the western drainage. The homesite on Parcel A has been shifted west closer to the interior access road and farther away from the downhill homes on Soares Lane. See Attachment E – Aerial Photograph of Project Site and Attachment F – Tentative Map.

All three lots will have access from an interior 20-foot wide, paved private road. A 310± foot long retaining wall two to three feet high will be required on the east side of the road. A 400± foot long retaining wall two to six feet high will be required on the west side of the road. The private road will provide access to Happy Valley Road, a public road within the City of Orinda. Prior to accessing Happy Valley Road, the access road crosses property owned by Orinda Downs HOA. The applicants have acquired an easement through the Orinda Downs HOA property so there is now direct access between the project site and Happy Valley Road.

The current project now includes the complete repair of two on-site landslides and a swale containing a complex of landslide debris and colluvial deposits (see Attachment G), provision of an on-site stormwater drainage system, and trail easement dedication. It is anticipated that remedial earthwork will involve approximately 79,500 cubic yards of soil. The grading operation would proceed in stages, with cyclical placement and removal of an on-site stockpile in the northern portion of Parcel B. This area can accommodate a stockpile of approximately 24,400 cubic yards. See Attachment H – Site Plans.

## CONSISTENCY WITH THE GENERAL PLAN

The General Plan land use designation for the property is Low Density Single Family Residential which allows up to two dwelling units per acre. The property has had this General Plan designation since at least 1981. The proposed project complies with the density allowed by this designation. The project would create three lots for single-family residential development of 2.34, 2.55, and 13.82 acres in size. The project would also be consistent with General Plan goals regarding preservation of open space and other scenic features. Residential development would be located on lots twice the minimum size allowed in the R-40 zoning district with approximately six acres of Parcel B continuing to be preserved by a scenic easement. An existing 10-foot trail easement intending to serve as part of a citywide trail system will be expanded.

## CONFORMANCE WITH ZONING REGULATIONS

The property is zoned R-40, Single-family Residential District-40. This zoning designation allows one detached dwelling unit per 40,000 square-foot lot and the accessory structures and uses normally auxiliary to it. This property has been zoned R-40 since at least 1981. This zoning designation can allow up to 20 lots/dwelling units on this 19.23-acre property. The property is located in the Hillside Overlay District (HOD) and although the R-40 designation can allow up to 20 lots, density for properties in the HOD may be reduced based on the average slope of the property. In this case, the average slope of the property is 24 percent and according to the lot area and density table in section 6-2043, the allowed density is 12 lots. Only three lots are being proposed so the project is well below the allowed density.

As can been seen in the table below, the three lots conform to the development standards of the R-40 zoning district.

| Development Standard | Required | Parcel A | Parcel B | Parcel C |
|---|---|---|---|---|
| Lot Area | 40,000 square feet | 110,078 s.f. (2.55 ac.) | 6,019,992 s.f. (13.82 ac.) | 101,930 s.f. (2.34 ac.) |
| Lot Width | 140 feet average width | 250 feet | 600+ feet | 225 feet |
| Lot Depth | 140 feet deep | 400+ feet | 600+ feet | 350+ feet |

## COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Review of the original subdivision application in 1987 included the preparation of an environmental impact report (EIR). The EIR analyzed not only the proposed four-lot subdivision[4] but also the potential for future subdivision of the 13.82 acre Parcel D into four or five lots. Even though the application was ultimately denied by the City Council, the Final EIR (FEIR) was certified by the Planning Commission on October 13, 1988.

The project re-activated in 2005 is less dense than the one analyzed in the certified 1988 EIR and has been determined by the City to be consistent with the FEIR. However, given the age of the FEIR and minor revisions to the proposed project, the City determined that an Addendum to the FEIR should be prepared to evaluate the minor revisions and to update the environmental baseline. Some members of the public, expressing concern regarding the age of the 1988 FEIR, objected to the Addendum procedure. Though the age of the certified FEIR, by itself, would not necessarily affect its adequacy for reviewing the current proposed project, during preparation of the Addendum, new information about on-site geotechnical issues became available. The City requested the applicants to provide supplemental geotechnical studies which noted that a previously identified landslide encompassed a larger area than originally thought. This landslide had the potential to impact the access road to Parcel C.

[4] The original application for MS504-87 was for the subdivision of 20.6 acres into four lots. Subsequent to the denial of MS504-87, the City approved MS503-90 for a two-lot subdivision. The subdivision "removed" proposed Parcel B. When MS504-87CCII was resubmitted in 1992, the map was revised to reflect only three new lots, Parcel A (former Parcel A), Parcel B (former Parcel D), and Parcel C (former Parcel C).

Although the current project includes new geotechnical information, according to section 15163(a) of the *CEQA Guidelines*, the City may choose to prepare a supplement to an EIR if only minor additions or changes would be necessary to make the previous EIR adequately apply to the project in the changed situation. Staff determined that since only minor additions or changes are necessary to make the previous FEIR adequate, a Supplement to an EIR (SEIR) could be prepared.

To determine the scope of the Draft SEIR, the City prepared an Initial Study based on the current project. The purpose of the Initial Study is to assist in the preparation of the SEIR by focusing the SEIR on the effects determined to be potentially significant, and identifying the effects determined not be significant and explaining the reasons for those determinations. The Initial Study determined that there could be potentially significant impacts related to aesthetics, air quality, geology and soils, hydrology and water quality, and transportation and traffic from the current plan. Environmental effects found not to be significant are those related to agricultural resources, biological resources, cultural resources, hazards and hazardous materials, land use planning, mineral resources, noise, population and housing, public services, recreation, utilities and service systems. (The Initial Study can be found in Appendix A of the SEIR)

A Draft SEIR was prepared by City staff addressing the current plan which, though a smaller overall project, now includes more remedial earthwork. The SEIR evaluates the potential impacts associated with the current plan and updated baseline reports and identifies the additions or changes necessary to make the previous EIR adequately apply to the current plan. The FEIR was used as a basis for information about the setting of the project site and surrounding area, and for thresholds for determining impact significance. The FEIR is reproduced in its entirety in Appendix B of the SEIR.

The FEIR and SEIR are informational documents prepared to inform City decision-makers and the public of the significant environmental effect of the project, possible ways to minimize the significant effects, and reasonable alternatives to the project. The SEIR concludes that the project would result in less than significant impacts related to noise. Although the FEIR and SEIR identified that the project could result in significant impacts on Planning and Policy Context, Traffic and Circulation, Geotechnical Considerations, Storm Drainage and Runoff, Biologic and Habitat Considerations, and Visual, Cultural, and Other Environmental Considerations, it concludes that all project impacts can be mitigated to less than significant levels. The SEIR also includes sections on the CEQA process, project description and objectives, cumulative and growth-inducing impacts, and alternatives. The SEIR revises the FEIR through supplementation.

The Draft SEIR was submitted to the State Clearinghouse and approved for a 30-day public review period which ended on July 14, 2008. It should be noted that CEQA requires public review of environmental documents but does not require public hearings. Written and oral comments received on the Draft SEIR will be addressed in responses to comments which will also indicate whether any changes to the Draft SEIR resulting from public or agency input are necessary. Responses to comments and the Final SEIR will be submitted to the City Council for review at a subsequent public hearing.

## PUBLIC NOTIFICATION

A Notice of Availability of the SEIR was published in the *Contra Costa Times* and mailed to property owners within 300 feet of the project site and parties requesting notice on June 12, 2008. Copies of the Draft SEIR are available for review at the City Offices, Lafayette Library, and on the City's website. Notice of this hearing before the City Council was mailed to property owners within 300 feet of the subject property and those parties requesting notification on July 17, 2008 and published in the *Contra Costa Times*.

## STAFF ANALYSIS AND COMMENTS

This current project is in substantial compliance with the 1992 tentative map preliminarily approved by the City Council in 1994. The Planning Commission has completed review of the project, draft conditions of approval and Draft SEIR and is recommending adoption of the SEIR and approval of the project subject to the mitigation measures and conditions of conditions.

As it did with the Planning Commission, staff suggests the City Council focus its review on whether or not the SEIR sufficiently identifies the potential environmental impacts of the project and methods to avoid or mitigate those impacts and supplementation of the FEIR. Adequacy should be considered in terms of what is reasonable in light of factors such as magnitude of the project, the severity of its likely environmental impacts, and geographic scope of the project. CEQA does not require that conclusive or exhaustive tests or studies be performed for EIRs. *CEQA Guidelines* acknowledge that there may be disagreement among experts but disagreement does not make an EIR inadequate. This SEIR presents all relevant information, summarizes the main points of disagreement among the experts, and reaches a conclusion regarding significance and mitigation.

The City Council should also review the project and draft conditions of approval (see Attachment I). The conditions and mitigation measures in Attachment I are the ones recommended for approval by the Planning Commission on July 3, 2008. Some mitigation measures as identified in the SEIR have been revised or eliminated. These revisions will be noted in the Final SEIR. Attachment J is the July 3 Planning Commission staff report explaining the reason for the revised mitigation measures.

It should also be noted that during this application process, the City's Traffic Consultant, Chuck DeLeuw, the Trails subcommittee of the Lafayette Parks, Trails, and Recreation Commission, and the City of Orinda reviewed the project.

Mr. DeLeuw's comments centered on the need for signing and pavement striping of Happy Valley Road and have been included in the conditions of approval. The Trails subcommittee stated that the existing 10-foot trail easement bisecting this property is an integral part of the West Trail. After walking the project site, they requested a realignment of the existing easement to provide for a better trail experience and a widening of the easement to the current standard of 20 feet. The tentative map (Attachment F) shows the realignment of the easement. Expansion of the trail easement to 20 feet is being made a condition of approval. The City of Orinda provided comments on access from Happy Valley Road and the need for a hydrologic study. Their comments have also been included in the conditions of approval.

## FINDINGS

In order to approve MS504-87CCII, the City Council will have to make a series of findings related to the subdivision of land and development in the hillside overlay district. The findings are listed below. Analysis of the project's conformance with these findings will occur in a subsequent staff report, however, based on staff's review of the project to date and the information contained in the SEIR, it is staff's opinion that the City will be able to make the proper findings to approve MS504-87CCII.

The findings for approval of a minor subdivision are the same as those for granting a land use permit (§6-215, §6-216).

1. The proposed subdivision will not be detrimental to the health, safety and general welfare of the city.

2. The proposed subdivision will not adversely affect the orderly development of property within the city.

3. The proposed subdivision will not adversely affect the preservation of property values and the protection of the tax base within the city.

4. The proposed subdivision is consistent with the general plan and each element of it and will not adversely affect the policies and goals set forth in the general plan.

5. The proposed subdivision will not create a nuisance or enforcement problem within the neighborhood.

6. The proposed subdivision will not encourage marginal development within the neighborhood.

7. The proposed subdivision is consistent with the purpose section of the zoning district in which it is located.

Findings for Approval of a Subdivision (§66474 Gov't Code)

1. That the proposed map is consistent with applicable general and specific plans.

2. That the design or improvement of the proposed subdivision is consistent with applicable general and specific plans.

3. That the site is physically suitable for the type of development.

4. That the site is physically suitable for the proposed density of development.

5. That the design of the subdivision or the proposed improvements are not likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.

6. That the design of the subdivision or type of improvements is not likely to cause serious public health problems.

7. That the design of the subdivision or the type of improvements will not conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision.

Findings Required for Approval of Subdivision in the Hillside Overlay District (§6-2071 LMC)

a. The design of the subdivision and the proposed development are derived from naturally contoured sites of reasonably regular configuration, do not create building sites on slopes exceeding 30 percent nor result in the need for construction of primary structures outside the areas of 30 percent or less slopes.

b. The design of the subdivision and the proposed development will result in each structure being substantially concealed, as required by LMC Section 2-2048, when viewed from lower elevations from publicly owned property (including freeways, roadways, open space, parks and trails), using the viewing elevation map as a guide to establish locations from which views are considered.

c. The design of the subdivision provides for a trail or portions of trails in conformance with the City's adopted Master Trails Map or an adopted regional trail plan, and the trail is dedicated and conditioned for improvement in accordance with adopted standards.

d. The design of the subdivision and proposed development use clustering or other site planning techniques to preserve hillsides, ridgelines and open space, minimize grading and impacts on wildlife habitats to the extent feasible, and provide for the preservation of on-site open space and vegetation, terrain, scenic vistas, trail corridors, streams or water courses, or other areas of ecological significance through dedication, easement, land trust or suitable regulation.

e. The design of the subdivision and the proposed development are arranged so that no portion of the lot exceeding a slope of 35 percent, is proposed to be altered by grading removal or alteration of a natural feature, the removal of vegetation or other activity related to the preparation of the site for development, except fire protection, or other measures necessary for public safety, slope or geologic stabilization or the provision of a trail in conformance with the City's adopted Master Trails Map or an adopted regional trail plan or where the Planning Commission finds that an exception is necessary to provide the least intrusive or damaging access to an approved building site.

f. The development, including site design and the location and massing of all structures and improvements, will preserve the open and uncluttered topography of the City, and not interfere with a ridgeline corridor or compromise the open space or scenic character of the corridor.

g. Each proposed house location and the location of each related structure is sited to minimize loss of privacy and not unduly impact, restrict or block significant views.

h. The design of streets, streetlights, storm drainage, utilities and other common improvements incorporated into the subdivision comply with adopted City standards and are designed to preserve the character of the site and surrounding area, minimize visual impact and avoid adverse impacts on surrounding properties and neighborhoods.

i. Street right of way incorporated into the design of the subdivision is based on the following conditions;

1. Steepness of terrain;
2. Depth of cut, amount of cut and fill, height and appearance of retaining walls;
3. Type and quantity of existing and proposed trees and vegetation;
4. Ability to give the appearance of a natural slope after grading and landscaping;
5. Adequacy of off-street parking to compensate for any lack of on-street parking;
6. Adequacy of required turn-around spaces every 500 – 1,000 feet;
7. Adequacy of sight-distances around curves and near driveway entrances;
8. Number of home sites to be served by the street;
9. Potential for future extension of the street.

j. The design of the subdivision and the proposed development provide adequate emergency vehicle access, including turn-around space, to each building site and surrounding undeveloped areas, while protecting valuable trees, minimizing grading and preserving the natural hillside character of the site and vicinity.

## RECOMMENDATION

Conduct public hearing, consider supplement to an environmental impact report, the project, and conditions of approval, and continue the matter to the meeting of August 11, 2008.

## ATTACHMENTS

A. Mutual Compromise Settlement and Release Agreement
B. Planning Commission Minutes – February 1, 2007
C. City Council Minutes – April 23, 2007
D. Draft Planning Commission Minutes – June 19, 2008
E. Aerial Photograph of Project Site
F. Tentative Map, Subdivision MS504-87, received May 6, 2008
G. Site Plan and Field Investigations
H. Preliminary Grading, Drainage, and Improvement Plans
I. Draft Conditions of Approval
J. Planning Commission Staff Report – July 3, 2008

# MUTUAL COMPROMISE SETTLEMENT AND RELEASE AGREEMENT

This Agreement, executed in duplicate originals for the convenience of the parties, is entered into within the County of Contra Costa, State of California, between JOHN E. BARSELL, JR. (Barsell) and the CITY OF LAFAYETTE, a municipal corporation (City).

RECITALS:

A. In 1974, Barsell was the owner of approximately 26 acres of unimproved land located within the City of Lafayette, Contra Costa County, California. Pursuant to Application for Minor Subdivision (MSL2-74), the 26 acre parcel was subdivided into 4 separate parcels--3 separate lots on Soares Lane with a 20.6 acre remnant parcel which Barsell contemplated for future subdivision and development. Pursuant to conditions of approval of MSL2-74, further subdivision and development of the 20.6 acre remnant parcel was suspended for a minimum period of 10 years;

B. In 1987, Barsell made application to the City for minor subdivision of the 20.6 acre remnant parcel created in 1974 pursuant to MSL2-74. The application was for 4 separate lots, 1 of which lots was to consist of a 13.82 acre remnant parcel (MS504-87).

C. Subdivision Application MS504-87 was denied without prejudice on October 13, 1988 by the City's Planning Commission. The same application was subsequently refiled as MS504-87II and as refiled was denied by the Planning Commission on March 9, 1989 and appealed to the City Council.

D. On June 12, 1989, pursuant to resolution, the City Council denied MS504-87II. Barsell then filed a complaint against the City with the Contra Costa County Superior Court in which judicial review of the City's denial of the subdivision application was sought as well as other forms of relief and damages. After hearing, the Superior Court remanded MS504-87II to the City Council for reconsideration of its decision that the revised gate approach was inadequate to access the proposed subdivision.

E. On May 21, 1990, the City approved a subdivision application of Barsell, being application MS503-90, pursuant to which a 2 lot subdivision was created. One lot was a 2.4 acre parcel on which had been constructed a single-family home under actual ownership of a party other than Barsell. The second lot contained the balance of the original remnant parcel of 20.6 acres consisting of approximately 18.2 acres of unimproved real property.

F. Prior to its reconsideration of its decision on MS504-87II (as modified to reflect the further subdivision of property in MS503-90) the City requested of Barsell certain submittal information.

Submittal information was submitted to the City by Barsell without prejudice to Barsell's contention that reconsideration was limited to an existing as opposed to an augmented administrative record. The City deemed the matter complete for reconsideration in May of 1992 and subsequently acted formally to affirm its prior decision of denial of Subdivision MS504-87II as amended by MS503-90. Barsell filed a Petition for Reconsideration on October 20, 1992.

G. Barsell and the City mutually desire to avoid the cost of further litigation and to resolve their dispute over Barsell's proposal to subdivide an 18.2 acre remnant parcel as proposed in Application MS504-87II as modified by Subdivision Approval MS503-90.

H. Save and except for the rights, duties and obligations specifically set forth in this Agreement, Barsell and City desire to terminate all claims, actions, rights, duties, obligations and liabilities which may exist as a result of the proceedings taken to date.

NOW, THEREFORE, in consideration of the Agreements, acknowledgments and release contained in this Agreement, the parties hereto hereby agree as follows:

TERMS OF SETTLEMENT AGREEMENT:

1. **Reconsideration of Resolution No. 76-92 and Approval of the Proposed 3 Lot Subdivision.** The City Agrees to reconsider its adoption of Resolution No. 76-92 at a noticed public hearing. With that reconsideration, there shall be proposed for consideration by the City Council the subdivision of the 18.2 acre remnant parcel (comprising 3 parcels, 2 of which are conventional single-family lot size and the third of approximately 13.5 acres) with subdivision access from Happy Valley Road in accordance with a submittal plan of Schell & Martin heretofore made dated June 1, 1992; provided, however: (i) the road intersection at Happy Valley Road shall comply with CalTrans standards for sight distance for traffic traveling at 25 miles per hour; and (ii) an encroachment permit if and as required shall be obtained from the City of Orinda.

If upon reconsideration, the City Council determines that the proposed subdivision as described herein should be reconsidered for approval, the City Council shall then direct staff to prepare proposed conditions of approval. The staff shall prepare and then refer the conditions of approval to the City Council and the City Council shall then hold a further public hearing and make its determination as to whether or not to approve the subdivision as presented above subject to such conditions as the Council considers appropriate.

2. **Property Owner's Right to Challenge the Conditions of Approval:** Barsell reserves the right to challenge administratively and judicially any conditions to the approval of the subdivision

imposed by the City which he fees to be improper and/or inappropriate for any reason. Such a challenge to conditions to subdivision approval, if any, shall be the subject of separate proceedings unrelated to the settlement terms of this Agreement. The outcome of a challenge by Barsell to a condition(s) imposed by the City to an approval of the 3-lot subdivision shall in no way effect the settlement of and release from the pending litigation all as provided below.

3. **Release by Barsell.** If the City approves Barsell's proposed subdivision including access from Happy Valley Road as provided in paragraph 1. above, then Barsell shall provide the following consideration irrespective of and notwithstanding his right to challenge the validity of one or more of the conditions to the subdivision approval imposed by the City:

a. Barsell shall promptly dismiss with prejudice his proceedings against the City in the action entitled Barsell v. City of Lafayette, No. C89-03793, in the Superior Court of California, County of Contra Costa; and

b. Barsell shall release and forever discharge the City from all claims asserted in Barsell v. City of Lafayette.

4. **Right of Barsell to apply for Further Subdivision.** Barsell reserves the right to file an application seeking further subdivision of the 13.5 acre remainder parcel which would result from subdivision approval as herein set forth. The City retains all of the rights and authority granted to or vested in a public agency by law with respect to the review, approval, approval with conditions or disapproval of the subdivision application which Barsell may file with respect to the 13.5 acre parcel.

5. **Barsell Expressly Waives the Provisions of Section 1542 of the Civil Code of the State of California Which Reads as Follows:**

> "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

6. **Miscellaneous Provisions.**

a. This is a compromise settlement of a disputed claim and the consideration of this release is not, nor shall it be construed as an admission of the liability by the City.

b. Each party to the action referred to shall bear its respective costs and fees.

c. The undersigned have carefully read this Agreement, know what is in it and have signed freely and voluntarily.

d. This Agreement contains the entire agreement between the parties to it.

e. This Agreement constitutes an agreement between Barsell and City for the direct benefit of Barsell's interest in the property. It is understood that the agreement runs with the land and binds all persons who may hereafter succeed to any part of Barsell's ownership interest in the property. Barsell agrees to take all reasonable steps to give notice of this Agreement. If Barsell fails to do so, he agrees to indemnify, hold harmless and defend the City from any damages that it may sustain as a result.

Dated: _____
JOHN E. BARSELL, JR.

Dated: CITY OF LAFAYETTE

By _____
ANNE GRODIN, MAYOR

ATTEST:

_____
Robert F. D. Adams, City Clerk

Dated: _____
David J. Bowie, Attorney for Barsell

Dated: _____
Charles J. Williams, Attorney for City

barsell.agr
lac-2/3/94

Lane within the Hillside Overlay District. APNs 249-100-001.
(Refer to PC siting determination under file number HDP58-05)

**LLR12-06 RICHARD BARTLET AIA, (APPLICANT), MR. & MRS. JAMES VAN HOFTEN (OWNERS), LR-10 ZONING:** Request for a lot line revision pursuant to Section 6-2401 LMC to adjust the property line between two vacant, unaddressed parcels under common ownership accessed via Camellia Lane within the Hillside Overlay District. APNs 249-100-001 & 249-100-004.
**Recommendation**: Continue, without consideration, to February 15, 2007 .
**Project Planner**: Greg Wolff, Tel (925) 299-3204, gwolff@lovelafayette.org

**Vice Chair Mitchell moved and Commissioner Chastain seconded to continue the matter, without consideration, to the February 15, 2007 Planning Commission meeting at the mutual request of the applicant and staff.**

**AYES:** **Ateljevich, Chastain, Holt, Humann, Lovitt, and Mitchell**
**NOES:** **None**
**ABSENT:** **Harris**
**ABSTAIN:** **None**

D. **MS505-06 MIKE S. ELLIOTT (APPLICANT & OWNER), R-10 ZONING:** Request for a minor subdivision to divide an existing .49 acre parcel into two lots pursuant to Chapter 6-30 of the Lafayette Municipal Code, located at 721 Glenside Drive. APN 236-022-012.
**Recommendation**: The application has been withdrawn. No action is required.
**Project Planner**: Christine Sinnette, Tel. (925)299-3241, csinnette@lovelafayette.org

**The minor subdivision application had been withdrawn by the applicant. No action is required.**

**AYES:** **Ateljevich, Chastain, Holt, Humann, Lovitt, and Mitchell**
**NOES:** **None**
**ABSENT:** **Harris**
**ABSTAIN:** **None**

6. **CONTINUED PUBLIC HEARINGS** (Estimated start time: 7:00 pm*)

A. **MS504-87CCII – ROBIN AND KRIS LEAMY (APPLICANTS & OWNERS), R-40 ZONING:** Request for a minor subdivision to divide 19.23 acres into three lots for residential development pursuant to Chapter 6-20 and Chapter 6-30, Lafayette Municipal Code, located at 4123 Happy Valley Road, APN 247-010-019 and 020. Planning Commission review of an Addendum Environmental Impact Report and conditions of approval prior to final determination by the City Council at a subsequently noticed public hearing. MS504-87 was preliminarily approved by the City Council in 1994.
**Recommendation**: Finalize the conditions of approval and Addendum Environmental Impact Report and forward them to the City Council.
**Project Planner**: Christine Sinnette, Tel (925) 299-3241, csinnette@lovelafayette.org
(Estimated time: 90 min*)

Project Planner Christine Sinnette reported the minor subdivision was tentatively approved by the City Council in 1994. At their November 30, 2006 meeting, the Planning Commission reviewed the Addendum EIR and the draft Conditions of Approval and asked staff to revise some of the conditions and to provide more information on hydrology and geology. Staff has revised the draft conditions as requested. With regards to hydrology, staff has received specific conditions from the City of Orinda which have been incorporated into the addendum EIR as Mitigation No. 10 and as Condition of Approval No. 35.

With regards to the geology issue, Ms. Sinnette reported City Engineer Tony Coe has reviewed the November 30 meeting minutes and the letters from Paul Seidelman and Purcell and Rhoades. Mr. Coe continues to be satisfied with the details of the current geotechnical report prepared by Purcell and Rhoades.

As the Conditions of Approval require detailed plans for slide repair and the presence of the project geotechnical engineer whenever grading operations occurs, Mr. Coe didn't feel additional study or peer review is necessary. Therefore, staff is recommending the Planning Commission finalize the Conditions of Approval and the Addendum EIR and forward their comments to the City Council for final determination.

Commissioner Chastain asked staff to review what options they have at this point.

Ms. Sinnette indicated an EIR was certified for this project in the late 1980's and the project was denied. Through litigation, the project came back for review and the City Council preliminarily approved a four lot subdivision in 1994. Several conditions were imposed when the City Council approved the subdivision. The two conditions related to getting an encroachment permit for the driveway at Happy Valley Road and the improvements thereof have been met.

What the Commission has before them tonight is basically the same project that was approved by the City Council in 1994. The only thing that has been added is an addendum to update the technical reports due to the age of the environmental document. The responsibility of the Commission tonight is to review the draft Conditions of Approval and the addendum EIR; suggest changes, if any; and forward the project to the City Council for approval. Ms. Sinnette indicated there is no formal recommendation for approval or denial since the Council had tentatively approved the map.

David Bowie, on behalf of applicants Robin and Kris Leamy, commended staff for a very accurate staff report. With regards to the draft conditions, he would ask Condition No. 65 be modified as follows: "Any future development on Parcel B shall be planned ***in a fashion*** ~~for the northeast corner as far as possible from~~ to avoid the more valuable wildlife habitats (oak woodland, coastal scrub, and riparian) to the west and southwest."

With regard to Condition No. 43, Mr. Bowie questioned why ". . .and shall include a restriction prohibiting vehicular access across this property for the purpose of giving other adjacent properties access to Happy Valley Road." is part of the condition. Since significant improvements are being made to Happy Valley Road which would create a safe intersection as a means of access, there is no reason to have that there.

Mr. Bowie indicated the staff report pointed out two soils engineering firms have done extensive studies on the property, including a peer review by Alan Kropp & Associates. Mr. Bowie felt Mr. Seidelman's testimony about the conditions that existed on the Price property is irrelevant to the applicant's property since it is situated across the creek.

D.F. Felton, a geologist with Purcell and Rhoades reported they completed an investigation of the Leamy property with borings. They have reviewed aerial photograph interpretations of the slide which shows the slide narrowed down. This was done in the '87 study and '88 study. In 2006, they used an all-terrain track-mounted drill rig to investigate the different slide areas they have mapped and made recommendations for what repairs are to be made.

With regards to Mr. Seidelman's reference to other features on the Price property, the property is on the other side, with a separate little ridgeline that goes down. The drainage break is actually on a separate side of the hill, a separate area than what they are dealing with the subject property.

In regards to the comment on the polished surface of the rocks, Mr. Felton reported claystone bedrock is a relatively weak bedrock and very expansive. When subject to expansion, it can crack when it gets in contact with water. When you have water pouring through claystone rock that has polished surfaces, it will go in all different directions which does not indicate you've got a big landslide. It is in fact quite common in that type of a rock.

Commissioner Lovitt asked Mr. Felton if additional boarings would yield no useful information.

Mr. Felton replied a deeper boaring is not going to give them any more information than what they already have in determining what is out there at the site.

Robin Leamy, the owner of the property indicated his family have been residents of Lafayette for the past eight years and are not transient developers. During the year and half they have owned the property, they have engaged the most expert consultants possible to prepare the many environmental reports and studies that were required as part of the process. Their intent is to build their dream home on one of the three lots being subdivided. This provides them with the motivation to insure everything is done correctly and they feel they have done that.

Tim Johansen, owner of the lot next to Walter Price's property, agrees the owners have gone through extreme lengths to insure this project moves forward in a safe fashion, but he feels Mr. Price's letter made some pretty compelling arguments that there have been slides on their side of the hill. When he bought his house in 1994, he heard the same story from Paul Seidelman relative to deep seated landslides.

With the reality that two experts have differing findings, Mr. Johansen is asking they be given a chance to run more tests. Since he lives downhill from one of the slides, he is very concerned about how it is going to be repaired and how truly deep-seated it may be. He thinks it's important the Commission understands that and fully addresses the issue by asking an arbitrator to come in and look at the issue.

Commissioner Chastain asked Mr. Johansen if he was aware that the report was peer reviewed by another geologist, a third party arbitrator.

Mr. Johansen said peer review or no peer review, there are two opposing opinions. Since the area has demonstrated instability, all he would ask is that an arbitrator be brought in to look at the area before further development is done.

Commissioner Humann asked Mr. Johansen if he was suggesting that Alan Kropp's review should not be considered to be a peer review.

Mr. Johansen said he cannot speak to whether someone is an appropriate arbitrator or not.

Commissioner Humann assured Mr. Johansen that Alan Kropp is a very well respected soils engineer.

Mr. Johansen replied he did not know of Mr. Kropp's credentials, expertise, or experience. He will go back to the fact that there are two opposing sides – one side saying there's no problem at all, it's topical in nature and the other side saying they've got a deep seated landslide.

Commissioner Humann told Mr. Johansen he is not dismissing his concerns. He is just trying to get a feel about where he is coming from with the respect to the peer review.

Mr. Johansen reiterated based on the difference of opinions from the two experts and what Walter Price has said, he is asking another party be brought in to take a look at the matter.

David Bowie replied he did not want to belabor the particular subject either, but there actually is no conflict between experts. They have Mr. Seidelman's testimony in letters that relate to different properties, in a different area, and in different slope planes. Since Mr. Seidelman concededly has done no actual investigation whatsoever with respect to the Leamy property, there is no dispute between experts.

Chair Holt closed the public portion of the hearing and asked staff to address Mr. Bowie's statement earlier with regards to Condition 43, as it relate to vehicular access being prohibited.

Ms. Sinnette replied it was a condition carried over from a former subdivision of the land, of which this property was a remnant of that earlier subdivision. Staff does not have a strong need to keep that in there if the Commission feels it is not necessary to have it in there. There are other controls to prevent or to evaluate a future subdivision that may seek access through that area.

Chair Holt as if the staff can have the City Attorney review the matter.

Ms. Sinnette indicated she can certainly have the City Attorney look at it.

Chair Holt asked if the City would require an additional boring before a building permit was issued for a specific house.

Ms. Sinnette said the land slide would have to be repaired prior to final map approval. After the final map is filed, anyone wishing to develop on the properties would need to bring in lot-specific geotechnical reports.

Commissioner Chastain said he would prefer the restriction prohibiting access stay in the condition as it has historical weight. Since they are passing on something that was previously approved, he is reluctant to go back and select which of those things they keep and which ones they don't.

With regards to soils, Commissioner Chastain said he had a lot of respect for the professionals involved here but he thinks it would be good for the City to go on record to say they are taking a look at this and have it peer reviewed.

Ms. Sinnette said if the Commission will recall, they asked Mr. Seidelman to present evidence at the last meeting. As it stands, Mr. Seidelman has yet to provide this evidence that he said is out there.

Commissioner Chastain said what they did not ask for is that it be peer reviewed.

Commissioner Ateljevich said she would feel much more comfortable if someone with Alan Kropp's background can review the materials.

Commissioner Lovitt said it would get them out of the realm of speculation and guessing.

Chair Holt asked if Commissioner Chastain's suggestion can be included as an endorsement or recommendation they can forward to the City Council.

Ms. Sinnette said it could be made a condition that prior to final map approval there be a third party review of all the documentation.

With respect to liability and lawsuits, Commissioner Humann indicated it might not be a bad idea to ask the City Attorney if they should require a fourth peer review.

Ms. Sinnette indicated the same topic came up during the Soldier Field subdivision and the City Attorney at the time was very clear the City would have no liability based on an approval of a project.

Commissioner Humann said in that case, he would support Commissioner Chastain's concept in getting Alan Kropp to revisit this at some point.

Commissioner Holt added that he wants the City Attorney to look at the condition limiting further access through this property because in his opinion it's restrictive and if it doesn't have to be restrictive, then it shouldn't be there. If it has to be there because of prior conditions of approval, so be it. But it's his experience that this would put an undue burden on the property owner if he had legal authority to do this – he should be allowed to do it in the normal process. So he would like the City Attorney to take a look at it and to advise if she thinks it's restrictive and it should be taken out or she can tell us that it needs to stay in.

Commissioner Ateljevich said she is inclined to agree with Commissioner Chastain. They always expect that when they write conditions of approval for a subdivision that they stay and stick with it.

Chair Holt indicated he was not sure that this was a condition of approval and asked Ms. Sinnette about it.

Ms. Sinnette said she saw it as part of the resolution.

Chair Holt said he didn't doubt it was there and there was probably a reason why. But he felt that reason needs to be good, or else it shouldn't be there.

Ms. Sinnette thought part of it had to with the City's concern that all of this area was being subdivided in a piecemeal fashion. She knows for a fact that was one of the reasons the project was denied before, that there was no coordinated development plan and access was already an issue.

Chair Holt said the City Attorney should make the final determination on the legality issue.

Vice Chair Mitchell thought the condition should be left as is. Should the applicants want to come back and present strong evidence as to why it should be removed, they can do that after the fact.

Commissioner Ateljevich felt that is the approach they should take.

Chair Holt asked staff if they wish to comment on that.

Ms. Sinnette said she can research it further by going back to the original staff report.

Chair Holt said to leave it in as Vice Chair Mitchell had suggested.

Commissioner Humann said since the applicant has indirectly asked for that condition to be modified, they should at least figure out why it is there.

Vice Chair Mitchell indicated he is not sure if the burden to research it should fall on staff. He reiterated it would be up to the applicants to come up with compelling reasons to have it removed.

Commissioner Ateljevich indicated she would like to hear how staff is going to write a condition requiring another peer review.

Ms. Sinnette indicated she can insert a condition in the neighborhood of Conditions 39 or 40 – such as, "Prior to final map approval, all geotechnical reports, public hearing testimony and minutes, and correspondence including the letter from Seidelman Associates, dated January 22, 2007, shall be reviewed by Alan Kropp & Associates or other geotechnical engineering firm acceptable to the City. The applicant shall bear all costs associated with this peer review. The City Engineer shall make the final decision as to the adequacy of all geotechnical reports and plans and peer review."

Commissioner Ateljevich felt it should be Mr. Kropp. She thinks Ms. Sinnette should also mention the Seidelman letter because someone else might not know what is meant by other testimony.

Ms. Sinnette said she would go ahead and list that in the conditions, along with the minutes.

Vice Chair Mitchell indicated he would recommend adoption of Mr. Bowie's words in Condition No. 65, where it removes the specific reference to the northeast.

**Commissioner Ateljevich moved and Vice Chair Mitchell seconded to finalize the Conditions of Approval as stipulated and accept the Addendum Environmental Impact Report. The two documents will be forwarded to the City Council for consideration at their second meeting in March.**

**AYES:** **Ateljevich, Chastain, Holt, Humann, and Mitchell**
**NOES:** **Lovitt**
**ABSENT:** **Harris**
**ABSTAIN:** **None**

**7. NEW PUBLIC HEARINGS (None)**

**8. OTHER BUSINESS (None)**

**9. COMMISSIONERS' ACTIVITY REPORT (None)**

**10. PLANNING MANAGER'S REPORT (None)**

**11. ADJOURNMENT** - Adjourn to the regular Planning Commission meeting of February 15, 2007

**The meeting was adjourned at 8:15 PM to the regular Planning Commission meeting of February 15, 2007.**

Respectfully submitted,

_____

Karen Liu, Contract Minute Taker

reducing the amount of work required from $50,000 for an addition or alteration down to $15,000 for additions and alterations that require the shut-off valve. Previously in 2000, when the County adopted the first ordinance, the ordinance dealt only with gas shut-off at the meters. In 2005, they amended that ordinance to now include the shut-off at the appliances. The City Council adopted both of those ordinances within about six months of the County's adoption. So, technically the ordinance tonight only addresses the change in valuation and the addition at the point of sale. The reason it was showing up in the ordinance is to remove language about adopting County ordinances by reference which is cumbersome and confudsing.Therefore, instead of adopting by reference which is what the first ordinance did in March, the City now has created its own ordinance, taking the two previously approved ordinances by reference, and now folding them into the City's own ordinance.

Councilmember Tatzin asked what the value was of having two sets of valves whether the City or the County required it, or the benefit in terms of safety of having the two devices, and Ms. Sinnette said she did not know.

Councilmember Andersson confirmed with Ms. Sinnette that if he went to get a permit to do $20,000 worth of new windows, he would need to put a seismic shut-off valve on the meter and then excess flow shut-offs to any gas appliances he had also. He also confirmed the change was the lower construction value and the point of sale requirement.

Councilmember Tatzin felt there were a number of interesting issues to consider—1) whether point of sale should be done or an education or incentive program for people to do this on a voluntary basis regardless of whether they are remodeling; 2) what kind of valve works best; and 3) do we need two sets of valves between the gas meter and between the line. He recommended referring the item to the Emergency Preparedness Commission with a request to return with specific answers to all three proposals and hopefully the Association of Realtors could be in touch with them about the kind of program proposed and what kind of resources the Association could provide. The Commission could then look at what could be done with on-going programs.

ACTION: It was Council's consensus to continue the item, and re-notice the public hearing.

**8. STAFF REPORTS** – None

**9. PUBLIC HEARINGS**

**A. Christine Sinnette, Senior Planner**

**MS504-87CCII – ROBIN AND KRIS LEAMY (APPLICANTS & OWNERS), R-40 ZONING Request for a minor subdivision to divide 19.23 acres into three lots for residential development pursuant to Chapter 6-30 and Section 6-2071 of the Lafayette Municipal Code and adoption of an addendum to a previously certified environmental impact report, located at 4123 Happy Valley Road, APN 247-010-019 and 020.**

Recommendation: Review the conditions of approval and continue the matter to the meeting of May 14, 2007.

Councilmember Tatzin disclosed that two or three weeks ago, he met with some of the abutting neighbors and they discussed their points of view on the application.

Ms. Sinnette gave a brief description of the project, noted the addendum to the EIR was being finalized by staff and would be provided at a later date. She said the staff report contains an

analysis of the project and includes a number of attachments such as the staff report and minutes from the Planning Commission meetings and public correspondence, Attachment CC9 contains conditions of approval as finalized by the Planning Commission and staff recommends the Council review the conditions of approval and continue the matter to May 29, 2007.

Councilmember Tatzin confirmed with Ms. Sinnette that if the property changed hands, parcel B was 13 acres and someone could apply for a subdivision in the future.

Councilmember Tatzin asked for the status of the addendum to the EIR. And, after the Council received the addendum, what actions if any would the Council need to take with respect to it. City Attorney Subramanian said the Council could adopt the addendum as part of the process approving the application or if additional information was needed, then the Council could continue the meeting and request that additional information be presented and that the addendum provide it.

Mayor Federighi asked if it was a problem that the Council never certified the original EIR, and Ms. Subramanian said the Planning Commission certified the EIR and it was not necessary for the Council to also certify it.

Councilmember Andersson noted there were several comments regarding landslides, felt there was uncertainty about what additional landslides may exist and asked for an assessment. Ms. Sinnette said those issues were raised at the Planning Commission who felt there was adequate material at the time for their review of a subdivision; however, they did include condition number 23 that required that prior to final map approval, a peer review would need to be conducted. The applicants have chosen to have the peer review done now so the City was in contract with Alan Kropp & Associates to review the 1988 draft and final EIR's, the addendum which was reviewed by the Planning Commission in February, the updated geologic report submitted by the applicants in 2006, as well as about 11 other separate pieces of public correspondence, including the additional Seidelman letter from April 16th. All of this was currently being reviewed by Kropp and Associates and staff was awaiting their final report to determine whether additional studies needed to be done.

Councilmember Andersson sad the Seidelman letter also suggested that some of the issues could be resolved by adjusting lines between parcels and he confirmed with Ms. Sinnette that she was not sure whether or not the applicants had considered this or not.

Councilmember Andersson referred to parcels A and C, said there are building sites identified of 15,000 square feet generally in an area that minimize the roadway where construction and grading would take place. On parcel B, there is a building site identified as 200,000 square feet which goes over to the other side of the parcel. He asked why there was such a difference.

Ms. Sinnette said when a subdivision is being proposed in a hillside overlay district and no specific home site or design are being shown, the hillside regulations require the applicant at least show they have a minimum of 15,000 square feet that is buildable and meets other requirements, and that was why Parcels A and C were only 15,000 square feet. She said they currently meet the minimum requirement for the hillside overlay district and if a subdivision is approved, specific home sites would need to be submitted for design review.

Ms. Sinnette said she has asked the applicants to indicate a location on Parcel B and they returned with the proposed site because they wanted to have a little discretion on where they

could actually place their home. However, she noted that the entire area met the City's development requirements for the hillside overlay district.

Councilmember Tatzin said condition 31, Section A talks about access roads shall be 16% grade. There was also another reference that talks about 20% or lesser grade, and he questioned if there was a conflict. Vice Mayor Anderson noted the latter reference was item 24, last sentence.

Ms. Sinnette said these were two sets of comments; Item 24 was a comment from the City Engineer and they looked at the driveway for traffic safety purposes which require no steeper than 20%, but the sentence actually reads, "The grade of 20% or other lesser grade as required by the Fire District." In this case the Fire District commented independently from the City Engineer, so staff would default to the 16% as required by the Fire District.

Councilmember Tatzin said the staff report indicated that the lot lines were similar to what was originally proposed back in the 80's and he wondered what the difference was when the Council last heard this proposal. Ms. Sinnette said the addendum shows the former subdivision. She said it was not the lot lines themselves; those were the same. What has changed is there have been a slight re-alignment of the interior access road and a shifting of the proposed home site on Parcel A.

Mayor Federighi referred to condition 45 on page 9 of 18, and said mitigation measure 5 states, "The two active landslides on the site should be repaired". She questioned whether the language should be "shall." Ms. Sinnette said this should have been changed to "shall" and this would be done.

Councilmember Andersson noted there was a letter from the City of Orinda with four comments and he questioned if those had been incorporated into the conditions. He said they related to hydrology, access from Happy Valley Road, an easement or other transfer of land necessary and amendment to the scenic easement. Ms. Sinnette said the hydrology was addressed in condition 39. Condition 27 refers to the former subdivision that dedicated development rights to Contra Costa County, and the applicant needs to prove they are able to develop the roadway. Condition 28 discusses completing the requirements of the encroachment permit issued by Orinda and she felt all comments had been addressed.

The public hearing was opened.

DAVID BOWIE, representing the applicant, said he worked on the project 20 years ago, said the Leamy's became involved in the project relatively recently but owned it now for two years. He said they bought the property for one reason; to build their dream home on the larger parcel. They wanted to buy the one lot, but because it was not a subdivided parcel they bought the entire parcel. They have submitted an application essentially identical to the application originally submitted by the prior owner which was the subject matter of the 1994 settlement agreement. They have gone to great lengths to make this the same exact submittal and they also have gone to great lengths to make sure they satisfy the requirement of creating a safe intersection of the gate access to Happy Valley Road, which they were doing. He noted they were widening Happy Valley Road, the intersection will meet all Caltrans sight distance requirements, an encroachment permit has been obtained, and entered into an agreement with the Orinda Downs Owners Association which controls a strip of land which would separate this property from Happy Valley Road itself. He also noted that regardless of that agreement, the gate access was a historical access for the property which pre-dated any involvement of the

Owners association or the City of Orinda. Regardless, they were happy with the arrangement, but really did not need to take that extra step. Currently, the conditions as drafted would enable the Council to approve the project, staff has summarized their current status, and acknowledged approval would not occur this evening. He said it has been referred for further peer review which will be heard at the next meeting on May 29, 2007.

Regarding the question of whether or not there would be further subdivision of the other two parcels, Mr. Bowie said a condition of the settlement agreement provides that they are granted the right to reserve future subdivision on another parcel. Also, they have a project that under 1988 standards was acceptable and consistent with the general plan and zoning ordinance. They have solved technical issues, they satisfy 1994 standards, and most recently they also met all standards of the application being a brand new application today. He felt the project would have very little impact, the EIR was certified many years ago, they agreed to an addendum to the EIR which was in the process of being finalized and met all requirements imposed. The project was studied extensively and 20 years of site observation and other than a minor debris slide, and given major rainstorms and seismic event, they see no evidence of any deep seated major slide. He felt it would be very unfair to suggest that for one moment there has been inadequate review of soils and geotechnical considerations. He said the actual landslide mapping was a regional interpretation not specific to the site and they have done a specific site field investigation, test boring, lab analysis and it will always trump the kind of review that was done by the landslide mapping. He felt it was unfair to say the report did not meet the standard of care, suggested that Mr. Seidelman's comments could only be comments made from an adjoining off site property having to do with the property that he was previously involved with. There will be another opportunity to speak on the matter, but there were very detailed conditions that were adopted by the Planning Commission which they have agreed to, they were required to satisfy the access issue which they have done at great expense and great benefit to the community, they are going for a very low density subdivision and the litigation contemplated that it would be approved if they simply satisfied the one issue which they have. He felt the development would actually make matters better for neighbors regarding drainage of soils, and noted their soils engineer and hydrologist were present to answer any questions.

Public Comments:

CHRIS LANIER, said he fully supported the request to subdivide the property, felt it was a reasonable request, it was in character with the neighborhood and its surroundings, and he felt it was a very understated development as to what could be approved for the area. He felt the Leamy's have bent over backwards and worked with everyone to arrive at what was an exhaustive list of conditions.

SHEILA ENNIS, said they want the charm and property values that Lafayette preserved, felt the subdivision was a winner for all neighbors, it has been zoned for residential for one house per half acre, and when houses do get developed, they do not want to see 12 homes there. It was her understanding that the undeveloped area was causing problems for the surrounding neighborhood already, but it has also been established that the hydrology improvements proposed by the Leamy's will benefit the area. She said the Leamy's have gone to extreme lengths in satisfying the conditions and the simple fact that they plan to live there goes a long way to reassure them that the work will be done right. In a developer's situation, the 12 homes would be built as cheaply as possible, reducing the value of the neighbor's estates and property values in Lafayette, in general. She felt the beautifully executed improvement to the blind turn also indicates that the Leamy's approach to the property was thoughtful and careful, and she strongly supported the Leamy's low density, high quality best practices plan.

JIM WARDY, said he was in favor of supporting the Leamy's plans to build their dream home and also further establish roots for their five children in the community. He discussed the Leamy's good character and honesty, felt it was their right as property owners to build on their property, asked the Council to review and approve the application and believed the Leamy's would be responsible and generous neighbors.

ED SHAFFER, Arthur Norris, Walnut Creek, said he represents 5 families who live next to the site, said they were not opposed to 3 houses on the property as long as they were built safely. They are concerned about landslides and drainage, suspect there are deep landslides on the property that have not yet been studied, said everyone was waiting for the review by Alan Kropp and Associates, and they expect that new testing would be called for to confirm this. He said he emailed a letter this date, requested the Council direct staff to answer the criticisms of the 1988 EIR that have been sent in by his previous letter and by Mr. Seidelman, to answer his criticisms of the process that the City has gone through in handling the application, asked that the City provide the public with copies of the revised addendum and the new staff report in advance and in an appropriate timeframe to review and respond, and to provide everyone marked copies of those revisions. He also asked the Council to consider his key points in his March 5 letter in the Council packet. He felt the City was not forced to approve this application, as the Planning Commission minutes reveal that they thought they only had discretion to tinker with conditions of approval and talked about changing the EIR mitigation measures and were told they could not do this. So, if they understood this was a full discretionary matter, they may have done things much differently. Most importantly, he said the 1988 EIR was not immune to legal attack. Whether or not it has been 'certified' by the Planning Commission, it still must be complete and all issues must be responded to.

Councilmember Tatzin asked what Mr. Shafer's clients would do if Mr. Kropp felt that after review, the borings were satisfactory and that they fully describe the situation. Mr. Shaffer said he would deal with it at that time but said he would be surprised at this because the borings were so shallow and also showed landslide debris at the bottom.

JIM JOHANSEN, said the Kropp report spoke to the debris field, but also felt that it was not as positive toward the development. As a neighbor, he welcomed the Leamy's to build their dream home, but as a concerned citizen it has become obvious to him since starting the process in December that there is soil movement on the property that has not been adequately tested and they would like the Planning Commission to further review this and for the Council to make the final decision. He felt what would be found is that further testing is necessary in areas of property that were never tested. Once the testing is done, he would like to ensure the repairs are done according to what is requested.

PETER COLBY, said he lives directly down slope from Parcel A and possibly down slope from Parcel C, said he read the reports and to him as a lay person and concerned citizen, he felt there was a substantial risk of slides there. He said he did not know the Leamy's, felt it was significant to point out that they were not building on Parcels A and C and someone else would, and he was willing to have a house placed on the slope above his house, but was not willing to have that house slide into his backyard.

PETER CLARK, said he lives downhill from the proposed development, they love where they live and asked that new builders build their new homes responsibly on the hillside above them. He felt "responsibly" was the key word and the currently proposed subdivision was clearly not responsible. His original concern was Parcel A where the building pad is sited on a slide that

starts above Happy Valley Road and ends in their side yard. As currently envisioned, the house on Parcel A has inadequate drainage and could easily load up the hillside with water and then slide, cutting off access to five houses and possibly even destroying the Klein's house. Now, however, the geologist has indicated that Parcel C may be undermined by a deep seated landslide; the same type that caused the catastrophic failure of Quail Ridge also in Happy Valley. He felt the risk associated with Parcels A and C as currently planned were absolutely unacceptable and that all families had no choice but to oppose this substandard development. He asked how one would feel when a significant landslide occurred all because you did not require the developer to adequately test for landslides, plan for drainage and design stable roads.

STEVE KLEIN, said their home would be contiguous to the proposed Parcel A, said their family does not oppose the development, but as the process has gone on, they have become more concerned with the landslide and drainage issues. Their foundation has been disturbed in the past and has been repaired, and therefore, they get concerned when they think about unnatural movement in the soils associated with road and home development and so he asked that when the Kropp analysis comes in, that the Council "double down" the analysis to ensure this would be a safe development.

WALTER PRICE, said he lives next to the subdivision and asked that the planning in the subdivision be done properly with geotechnical analysis, landslide mitigation and repair, proper drainage and quality development. He had the experience of living through two landslides, spending hundreds of thousands of dollars and he felt very strongly that the analysis done so far was inadequate.

*Rebuttal*

DAVID BOWIE, representing the applicant, said he appreciated neighbor comments, said their position was clear about concern with geotechnical issues and if properly addressed, they would not have an objection with the subdivision itself. He also felt their concerns would not be casually tossed aside, but his point is that this has not been done. In listening to comments, there is almost an implicit assumption that the developer is going to do something that will precipitate a slide and run out of town and leave everything the way it is. In fact, what they are using are local consultants who will be signing off on plans, reports and recommendations whose entire livelihoods are at risk in the event their determinations are wrong. In essence, if they do not do any development there might conceivably be a landslide. The purpose of the EIR is to identify significant environmental impacts that are caused by the project and what was heard is speculation of landslide, soils and geotechnical conditions which exist right now without regard to the project. So, presumably, there is already a landslide avenue. If there are already hydrological concerns which he gathered there were, those are already existing conditions. What they are required to do by code is to make sure we do not add to any water drainage problems on site and therefore they are planning to install retention tanks to address hydrology issues. If they are going to be building expensive homes, they must build it with due care to make sure the home, residents and all surrounding residents are protected in every fashion and no one is going to be more concerned in the process than they are. Also, much of this was premature; no one will be building anything on site for some time until the entire subdivision process is complete and no one will be building specific improvements without further study and soils analysis in any case.

So, he felt the situation was that the extent of soils investigation that has been done to date and with the passage of 20 years was extraordinary. They have more information than they normally

ever have with respect to a project such as this. And, projects like this are routinely approved at the Tentative Map stage with additional work being done beyond. So, he was sensitive to concerns, his clients are as well, but regardless of the Kropp report, they have more than enough information and more than sufficiently adequate conditions to move forward right now and they have agreed to work with the Kropp report and whatever recommendations that may come out of that to come up with the best overall situation for everyone.

PAUL SEIDELMAN, geologist and geotechnical engineer, said he has been practicing for approximately 30 years, said his clients include the City of Lafayette, the East Bay Regional Park District, State of California, Contra Costa County, and numerous other agencies. He said he has initiated and participated in some of the largest landslide mapping projects in the State of California's history, and served as Chief Geologist for the US Forest Service in the region during the 1970's where he mapped millions of acres for landslide hazards. There is, under one of the parcels, possibly 2 landslides. Both of the parcels A and C were in landslide basins. If you carefully look at the data presented by Purcell Rhoades and Associates, there is landside debris in trenches and if you look at the location of that trench, there is no mapped landslide on the map where the trench is located. He said they have not mapped anything but active landslides, they have not mapped dormant landslides, the morphology of the two basins that are involved and this parcel can be developed into three lots quite nicely and safety. He said he has no doubt about it. But what is happening is there is intent to stay with the old map and not go back and rethink the process through and develop three good sites, and instead, there is a rush to go with what happened in 1988. If you look at what happened in 1988 and read carefully the review that Mr. Kropp gave, you will see he had numerous serious issues, and the mitigation measures which were proposed in terms of a buttress, in that there was no engineering justification for the buttress as to how it would work. He felt one could stabilize these basins but the EIR has to address the level of work that is going to go into these lots to create them and what is shown right now is a little ribbon of a road and a little hill for that road and a cut that is notched into shallow bedrock that runs across these two parcels to reach the far lot. And that is the extent of the grading that is to occur and this is what is discussed in the EIR. In reality, the work needed to develop these two parcels in the way they are proposed is much, much more significant. More grading and drainage mitigation will be needed. The subdivision should be re-thought as to where the boundaries are and where the pads are located. The road could be greatly shortened. And in fact, he said there is actually a scenic easement that is taking up the prime building way.

Councilmember Tatzin said on the map of the proposed subdivision dated June 15, 2006, it is showing a proposed 10 foot trail easement and another 20 foot trail easement and he thought he saw something which would make this co-terminus with the driveway access or road access. Ms. Sinnette said this was correct. He asked if there would be an access gate in the subdivision, and Ms. Sinnette said currently there is a gate there due to horses being corralled and also a pedestrian gate, and she said there is a condition about signing and access.

Councilmember Tatzin questioned if it would be likely that Mr. Kropp would be present on May 29th, and Ms. Sinnette said this was the intent, but staff has not specifically discussed with him the date, but would confirm with him.

ACTION: It was M/S/C (Tatzin/Andersson) to continue the item to May 29, 2007. Vote: 4-0-1 (Ayes: Federighi, Anderson, Andersson and Tatzin; Noes: None; Absent: Anduri).

**BREAK**
The Council took a five minute break and thereafter reconvened the regular meeting.

**Draft City of Lafayette**
**Planning Commission Meeting**

**MINUTES**

Thursday June 19, 2008, 7:00PM
Lafayette Community Center, 500 St. Mary's Road, Manzanita Room

CALL TO ORDER
Vice Chair Lovitt called the meeting to order at 7:05p.m.

ROLL CALL
Present: Vice Chair Lovitt; Commissioner Chastain; Commissioner Holt; Commissioner Curtin-Tinley; Commissioner Humann

Absent: Chair Mitchell; Commissioner Ateljevich

Staff: Christine Sinnette, Senior Planner; Malathy Subramanian, City Attorney; Niroop Srivatsa, Planning Director; Greg Wolff, Senior Planner

ADOPTION OF AGENDA
Commissioner Holt moved to adopt the agenda. Commissioner Humann seconded the motion which carried (5-0-0).

PUBLIC COMMENTS
Vice Chair Lovitt opened the public comment period. There were none.

NEW PUBLIC HEARINGS
**MS504-87CCII – ROBIN AND KRIS LEAMY (APPLICANTS & OWNERS), R-40 ZONING**: Request for a minor subdivision to divide 19.23 acres into three lots for residential development pursuant to Chapter 6-20 and Chapter 6-30 of the Lafayette Municipal Code, located at 4123 Happy Valley Road, APN 247-010-019 and 020. CONSIDERATION OF THE DRAFT SUPPLEMENT TO AN ENVIRONMENTAL IMPACT REPORT (SEIR).
**Recommendation**: Consider the matter, take public testimony, and forward recommendation to the City Council to adopt the Draft SEIR.
**Project Planner**: Christine Sinnette, Tel. (925) 299-3241, csinnette@lovelafayette.org
(Estimated time: 90 min*)
Christine Sinnette gave a verbal staff report stating that the Minor Subdivision was originally proposed in 1987. The application was re-activated as a 3-lot subdivision by new property owners in 2005. In 2006 and 2007, the Planning Commission and City Council considered the 3-lot subdivision. When the application was re-activated, staff decided that an addendum to an EIR certified in 1988 should be prepared to update the baseline studies. The Planning Commission reviewed the Addendum EIR and draft conditions of approval. The Commission had no specific comments on the Addendum EIR and requested some revisions to the conditions of approval and forwarded them to the City Council for their approval.

She noted that before the City Council meeting in April 2007, it was decided that because of concern over geotechnical issues a peer review of the geotechnical reports and comment letters from the public should be conducted. The City contracted with Alan Kropp & Associates, Inc., geotechnical engineers. Based on this peer-review and supplemental geotechnical studies, it was discovered that a previously identified landslide encompassed a larger area than originally thought. This landslide had the potential to impact the access road to Parcel C.

Ms. Sinnette indicated the current project now includes the complete repair of two on-site landslides and a swale containing a complex of landslide debris and colluvial deposits, provision of an on-site stormwater drainage system, and expanded trail easement dedication.

DRAFT

She said the current project is less dense than the one analyzed in the 1988 EIR and has been determined by the City to be consistent with the Final EIR. However, since new geotechnical information has now become available, the addendum EIR has been replaced by a supplemental EIR (SEIR).

Ms. Sinnette stated the SEIR evaluates the potential impacts associated with the current plan and updated baseline reports and identifies the additions or changes necessary to make the previous EIR adequately apply to the current plan. For each of the environmental issues analyzed in the SEIR, the environmental setting, thresholds of significance, impact analysis, and mitigation measures are discussed.

She noted that the final EIR was used as a basis for information about the setting of the project site and surrounding area, and for thresholds for determining impact significance. Except for the sections on geology, biological resources and noise, and those sections required by CEQA to be included in an EIR, most of the analyses, conclusions and mitigation measures are the same ones the Planning Commission reviewed as part of the former addendum.

Ms. Sinnette stated that in addition to considering the project as currently proposed, the Planning Commission should focus its review on the SEIR and the conditions of approval. Review of the SEIR should focus on its sufficiency regarding identification of environmental impacts and methods to avoid or mitigate those impacts and supplementation of the FEIR. Adequacy should be considered in terms of what is reasonable in light of factors such as magnitude of the project, the severity of its likely environmental impacts, and geographic scope of the project. CEQA does not require that conclusive or exhaustive tests or studies be performed for EIRs.

She noted that there continues to be disagreement among experts particularly about geotechnical impacts but such disagreement does not make an EIR inadequate. This SEIR presents all relevant information, summarizes the main points of disagreement among the experts, and reaches a conclusion regarding significance and mitigation. Staff and the City's consultants believe that the level of studies and detail provided in the project description, plans, reports, and SEIR are adequate for this stage of a tentative 3-lot subdivision. The applicants will be required to mitigate the potential impacts of project development but are not required or obligated to mitigate existing conditions or impacts not a result of the project.

She concluded by saying the Planning Commission should also review the draft conditions of approval. The conditions have been amended to address the revisions previously requested by the Commission. If those conditions have now been revised, they are shown in strikeout or underline text. The SEIR includes mitigation measures from the Final EIR and revised or new mitigation measures. The mitigation measures included in the conditions of approval do not show strikeout or underline text unless they are new mitigation measures and therefore new conditions.

Commissioner Holt referred to the letter from Mr. Price and the attorney representing some of the neighbors placed on the dais and asked for comments from staff.

Ms. Sinnette noted that the letter from Walter Price contains three major points. She said it primarily discusses the geotechnical issues and that staff and consultants, Alan Kropp and Associates, believe the geotechnical issues have been fully addressed for this stage of development. She said there will be remedial work done on the two landslides as well as the additional swale. She said there are some preliminary plans for remedial earthwork in the EIR so staff and the consultant believe it has been adequately addressed. She noted there has been a preliminary plan provided for drainage as well. She indicated there is a response letter to Mr. Price's letter prepared by the project Civil Engineer Schell & Martin which goes into more detail about the drainage plan. She said it is primarily meant to capture any drainage from impervious surfacing from the new development. She stated there is a question about a valley oak on the property which was reviewed by the project arborist back in 2005. Ms. Sinnette stated that the arborist determined that the tree was in poor health; it had appeared to have been damaged in a storm and had lost a major limb. Ms. Sinnette stated that she recalled going out to the property because of concern that the tree was being removed; however it was just the limb that was being removed. The project arborist has prepared a response that the death and/or damaged caused to the Valley Oak is from natural causes. She referred to the other letter and noted she was going to have the City Attorney look at it; which would have to be delayed until the attorney returned.

David Bowie, spoke as an attorney on behalf of applicants Robin and Kris Leamy. Mr. Bowie thanked staff for the extensive work done on the project. He stated it was an extraordinary effort and that he and the applicant

are very grateful. Mr. Bowie stated that he had a chance to review the letter from the neighbor's attorney who is in opposition of this project. He said the letter made three points; the first is titled "Why the Rush?" the second is "Don't talk about the project" and the third is "The 1988 EIR was never certified". Mr. Bowie stated he would address each point and said he was before the Commission in 1988 and recalled seeing several of the Commissioners who were present tonight. He stated the project has not been rushed. He noted that when the project was reactivated in 2005 by the Leamy's, work was done and hearings have been held every year since then. He reiterated that this has not been a rushed project. He reminded the Commission that this is a three-lot subdivision proposed for something over 18.2 acres in an R-40 zoning district. He stated the applicant could pursue much higher density than what is currently proposed. Mr. Bowie stated he would come back to the second point.

Mr. Bowie recalled the third point was that the 1988 EIR was never certified. He stated that this is not true and that to some extent it is probably irrelevant, but the City records indicate the EIR was certified in 1988. He said that it is true that the project was not approved by City Council after that certification was completed because it ended up going to court and then it went through judicial review and after the passage of some years it was approved for reconsideration so a notice of determination wasn't published at that time the statute of limitations for 30 days didn't run. He reiterated that the EIR was certified and now there is a supplemental EIR which is designed to address additional conditions that may have changed within 20 years. He agreed that the supplemental EIR is fair. He noted that the prior certification still stands. He commented that people think that because there was no approval that the EIR is not valid, he said that is not true according to the law. He said that the project was approved preliminarily upon reconsideration by the City Council and no challenge thereafter made.

Mr. Bowie, referred back to the second point made in the letter "Don't talk about the project". Mr. Bowie stated that it is an unusual context and the objection is not relevant. He noted that back in 1992 in a memorandum from Mike Henn, Assistant Planning Director stating that subject application has a long and unusual history. He indicated that there was an official reconsideration of this project by the City Council which was granted and preliminarily approved subject to two conditions. He stated the two conditions had to do with access across Happy Valley Road into this property. He stated that the Council did not want to speak to conditions of approval if the access was not taken care of. He stated that the access now has been taken care of so the Commission is now here to consider conditions to the approval. Mr. Bowie stated that the City Council asked the Planning Commission to provide input but it was a part of a hearing compelled as matter of law. He stated that he has letters from the former City Attorney to back up his last statement. He said this is not technically a legally noticed hearing where limitations in terms of the scope of the notice might make a difference. Mr. Bowie reiterated that the Commission is here to consider the supplemental EIR to see if it is complete based on whatever conditions have been identified and secondly the Commission is to approve conditions to the approval, which has been preliminarily granted, and that input goes to the City Council who will make the final decision.

Mr. Bowie stated that staff has a good point when they stated that the purpose of the supplemental EIR is to evaluate the significant environmental impacts of this particular project. Mr. Bowie stated that the principal concerns the neighbors have had, have been in regard to geotechnical considerations, specifically a deep-seated bedrock landslide. He stated that the landslide is more than adequately described in the supplementals, it has been peer reviewed by Alan Kropp on two occasions, 20 years ago and more recently. Mitch Wolff has also looked at it. Mr. Bowie stated that Mr. Wolff is present to indicate to you that this is more than adequately addressed as part of the overall study. He said that everything has been done that is necessary to assess and determine how to look at geotechnical issues other that the specific design studies which are done at the time construction is about to start. Mr. Bowie indicated that it has been suggested that deep hole boring take place. He stated that the plan is to take out, remove, and repair the landslide so he does not understand what good it will do to do a boring when the entire slide will be exposed and repaired. Mr. Bowie indicated that the landslide is a pre-exiting condition and is irrelevant to the planned development of the property. He stated that since it was already there the project is not causing the environmental impact and on that ground it has more than adequately been addressed. He said the Environmental Impact Report only addresses new issues caused by the development. Mr. Bowie referred to conditions number 37 and 38 referring to design standards that relate to a 10-year and a 100-year storm. He stated that the customary design in Contra Costa County and elsewhere in California is for a 10-year design standard not 100-years. He stated he doesn't know how one would detain 100 years of floodwaters; it has not been the standard and said the 100-year requirement is inaccurate and inapplicable. Mr. Bowie stated that condition number 22 refers to a grant of easement to the City. He said the

applicant has no problem with that but wants to make sure it has been properly addressed. He said the property east or west of Happy Valley Road is subject to Orinda jurisdiction. He said the applicant would be happy to give what south portion of Happy Valley Road they could. Mr. Bowie reserved the remainder of his time for the rebuttal period. He noted there were others present to speak about geotechnical issues.

Vice Chair Lovitt asked if Mr. Bowie wanted the other consultants to make presentations or if he would answer questions now.

Mr. Bowie stated the Commission should pose questions to the consultants rather than having them speak.

Commissioner Holt asked if the easement is dictated on a map.

Mr. Bowie stated that he and the civil engineer can't figure out where it is. He reiterated that the applicant doesn't have a problem granting the City an easement as long as it is legal. He stated he did not want a condition that cannot be fulfilled. He said he knows that much of the and around Happy Valley Road is actually in Orinda's jurisdiction.

Commissioner Curtin-Tinley referred to condition of approval 28 and 29, mitigation measures 2 and 3. She said these conditions speak to getting review and approval by the City of Orinda for certain roadway improvements and installation of signs. She asked if that was different than the encroachment permit that was required.

Mr. Bowie stated that the encroachment permit was obtained and all the requirements were met. He said Mr. DeLeuw, the traffic engineer for the City, had additional suggestions such as signing and central line marking which the City of Orinda had not required. Mr. Bowie stated that the applicant is happy to do that but technically because it is within Orinda's jurisdiction, they would need to get approval from them.

Commissioner Curtin-Tinley asked if Mr. Bowie anticipates an issue with the City of Orinda approving it.

Mr. Bowie stated he did not see an issue since it is safety-oriented.

Commissioner Curtin-Tinley asked the applicant to identify where the landslides are located and how they relate to proposed building sites.

Mitch Wolfe with Cal Engineering, the applicants' geotechnical engineer, showed the Commission on the map by coloring it in where the landslides are located. He stated that on the access road off of Happy Valley Road there is a landslide below the road. He said several test pits were excavated in this area to determine the landslide's configuration. He said on the road to Parcel C there is a landslide complex which consists of two separate slides that coalesce, and there were a number of borings and tests that were drilled in and around this landslide to figure out its configuration. He indicated that the road crosses over the landslide hence the recommendation for remedial stabilization of the slide. Mr. Wolfe stated that borings were drilled to get the approximate configuration of the slide. He noted that while the road crosses the landslide there is no portion of the building site impacted by the slide.

Vice Chair Lovitt opened the public portion of the hearing.

Jill Pergande, 4116 Happy Valley Road, stated she is a neighbor and that she has been in touch with the Leamys since they have been going through the application process. She stated that their application is reasonable because it improves the safety of the immediate area. She said her home is downhill from that area and the improvements that they have already made have made it safer for her driveway as well as the other people who would be driving in that area presumably from Lafayette and Orinda. She noted that what they are attempting to do with the property is consistent with what the City has indicated they would like to be doing in development. She said the Leamy's have put much time and energy into responding to the questions that have come up and have made a sincere attempt to respond to the issues that have been raised.

Vice Chair Lovitt asked where speaker's house is located.

Ms. Pergande showed the Commission on the map and said it was near the "s" shaped curve on Happy Valley Road.

Peter Clark, 4103 Happy Valley Road, stated his house is downhill and is at serious risk if the landslide on parcel B and C is not fully repaired. He showed the Commission where his home is on the map. He stated that for over a year and half he and his neighbors' geologist have insisted that this slide complex be adequately mapped by large diameter borings and then correctly repaired after the full extent and character of the slide is known. Mr. Clark stated that the applicant first denied the existence of the slide then after much foot dragging confirmed it with one small diameter hole. He said further delay ensued as the applicant's geologist went back and forth with the peer reviewer, mainly over the size and extent of the necessary repairs. He referred to mitigation measure number five in the EIR where removal and re-compaction of the slide is crossed out and replaced with "a possible scenario is to focus on providing a fill buttress for the access road and leave the thick colluvial deposit in place". Mr. Clark interpreted that the mean the applicant knows the big slide is there but they refuse to test and map it correctly and they will just ignore it when building the access road directly on top of it. He stated that this unacceptable to his family and neighbors given that millions of dollars of property and their personal safety would be put at unnecessary risk. He stated his other concern is drainage on parcel A, which is a very steep hillside and the site of numerous landslides in the past. He noted that the EIR states the runoff will be handled onsite with out professional assessment of the current situation. He said the only study he can find on how drainage works is from the 1988 EIR, which shows two storm drains running across his lot. He stated that neither of those storm drains exist and it is unclear whether there is enough capacity for current runoff let alone anymore for future development. Future refusals by the applicant to adequately test and repair the slide on parcels B and C and to take drainage on parcel A seriously will only result in more delays, more wasted time, and more cost. He asked that the Commission save the applicant both time and money by requiring them to adequately retest and repair the big landslide whose existence is undeniable.

Commissioner Humann asked the speaker if he is concerned about the slide now in its unimproved condition.

Mr. Clark stated that is not nearly as worrisome as after development because the development keeps the land wet and allows water to channel into the slide plane and create slides. That is why these landslides like Toledo Court or Quail Ridge come after development rather than before.

Peter Colby, 4109 Happy Valley Road, stated that his home is in line for the slide if it moves again, as it is a down slope property. He indicated he had not reviewed the Supplemental EIR as it became available on Thursday and he was on vacation. He stated he was unable to take the document with him on vacation because it was so large. Mr. Colby asked if the Commission had reviewed the full document and said he did not feel there could be a meaningful discussion when the document came out so recently. He referred to staff's comments that mitigation has been outlined sufficiently for this point in the proceedings. He said that there is an idea of what mitigation needs to be and the rest of the work will happen after approval. Mr. Colby stated he and his down slope neighbors are not comfortable with that. He stated that for twenty years the prospective developers have acted as though there was no significant slide; they have only admitted surface slides and small slides but nothing big. He indicated that only after the consultant he and his neighbors hired went out and nudged the City into looking harder and getting peer review finally was this very significant slide revealed. He said that if the City approves this project then he and his neighbors are left to trust the same consultants that ignored the slide for twenty years. He reiterated that he is not comfortable with trusting the same consultants who ignored the slide to do the right thing after the project is approved. He stated that the applicant is anxious to get approval and thinks Mr. Colby and his neighbors will be effectively silenced after that. He noted that after approval the only recourse would be to the courts. Mr. Colby referred to Mr. Wolfe's comment where he indicated that the building site is not affected by the slide and he asked if only the residence is not affected or if all outbuildings, pools and tennis courts etc. are required to be limited to that site. Mr. Colby stated that if they are not then he would submit that the same issues that interrupt drainage and burden the slide and create a further slide are still there. He said it is unknown if the outbuildings are going to be confined to the building site and he not sure what the answer is to that question. Mr. Colby said that in summary all down slope neighbors are concerned that the mitigation work and investigation work be done now and the mitigation work be laid out before approval, not after.

Vice Chair Lovitt referred the speaker's questions to Mr. Bowie and asked that he address them when he speaks during his rebuttal.

Paul Seidelman, 2477 Cherry Hill, stated that a year ago he appeared before the Commission and indicated that there were significant slides involved with this property that were not mapped and not analyzed in their

original documents. He said that after being called a fancifier by Mr. Bowie, additional borings were taken and grading which then amounted to 8,000 yards has now become 64,000 yards in order to fix this situation. Mr. Seidelman stated that this slide has not been properly analyzed as of this date. He indicated that only one boring penetrates the slide. He noted that no other borings penetrate the base of the slide. He stated that on his client's property, Tim Johansen's property, the slide is 44 feet deep at the house. He said the landslide mapping which still doesn't show those slides that Mr. Kropp identified in April of last year, and shows this slide complex stopping at the property line. Mr. Seidelman noted that the map fails to show that it crosses the property line and underlies his client's homes to a depth of at least 44 feet. He said the borings stopped at 44 feet and had not encountered the base of the slide. He indicated that the slide complex extends at least 150 feet beyond the property line and 200 feet below the one boring that encounters the base of the slide. He said based on this one boring a sub-stability analysis was done using values of cohesion and values of friction that are generally higher than are recommended for the soils in Lafayette; an 18 degree angle of internal friction instead of a 14 or 15 degree angle and a cohesion of 600 pounds instead of a cohesion of 100 or 150 pounds at most. He stated that it is doubtful that cohesion is even actually real in a long term analysis of the landslide.

Mr. Seidelman said he questions the geometry, mapping, and analysis of the slides. He pointed out that there is no discussion as to how it will be dewatered. HE said 28 feet below the surface is lower than the creek so a pump would be required and then the slide's stability relies on a pump. He thinks there are ways around this with careful design and geotechnical input. He thinks the project is feasible if the work is done right, but to date he has not seen geotechnical work that meets the standard of care. He noted that some people will say that it can be done later on, but his clients have no assurance that what is being done to a landslide that goes onto their property right now, will not result is serous damage to their property. Mr. Seidelman said it can be mitigated and it can be designed and taken care of but the time to do the analysis and mitigation is now at the time of the environmental impact stage. He indicated that the California Environmental Quality Act says you are supposed to understand and mitigate the impacts associated with the project. He said this report doesn't even show that the slide crosses onto his client's property.

Commissioner Holt asked the speaker to state his name and level of expertise.

He said Paul John Seidelman, and he is a geotechnical engineer, a licensed geologist, a licensed engineering geologist, a licensed civil engineer, and a licensed general engineering contractor. He said he has been practicing for 32 years in this area.

Commissioner Humann asked if the Kropp report which was the peer review for this development omits slide information.

Mr. Seidelman stated it was not the Kropp report. He said the Kropp report identifies numerous landslides.

Commissioner Humann clarified that those slides identified by Mr. Kropp's report are not shown on the map before the Commission.

Mr. Seidelman said that is correct and even the main slide he is concerned about stops at the property line and just a few feet up from the property line they have a boring that shows the base of the slide is 38 feet below the ground surface and magically they stop the slide lines at the property line. He said he knows they extend all the way across the properties on the other side of the fence and go to what used to be a swale in front of those properties.

Commissioner Humann stated that he is not a soils engineer and asked Mr. Seidelman's opinion regarding further evaluation of this issue after the tentative map has been approved and it is folded into the improvement plans and the grading of the project. He recalled that Mr. Seidelman previously said that he thought the project was feasible and the repair of the slides was doable. Commissioner Humann asked why the slides couldn't be evaluated further at a later date. He said if it becomes cost prohibitive then the clients have no project.

Mr. Seidelman asked where in the report is the impact discussed of moving 64,000 cubic yards. He noted there would be dust and noise and asked again where there is discussion of the impacts. He noted that if the site is dewatered the soils underneath Tim Johansen's house will be dewatered also. He stated that Tim Johansen's house sits on 40+ feet of clay soil that is currently quite wet and if you dewater that soil it will shrink creating an unstable situation. He stated that the best solution would be for a design team to talk about the technical

issues. He continued to say that in his opinion a lesser dewatering project could occur that would hold adequate water levels in the repaired slide and still not dewater the property under Mr. Johansen's house. He said that is a fine mitigating point that might save hundreds of thousands of dollars worth of damage to the Johansen house; he noted that it is not in the report. He said the fact that the slide extends under the house is not in the report; he said he would think that the California Environmental Quality Act would require that landslides are at least delineated before they be mitigated. He noted that the Commission had to ask the applicant to show where the landslide was on the map and that there is not a good map that shows it correctly and he and his clients have been asking for it for over a year. He said one slide is known to be there and there is another slide immediately to the west of it that he is not certain if it is a slide, it could be an erosional feature or it could be a bedrock landslide. He advised that the only way to really delineate these slides is to down-hole log it. He said there has been the equipment to do it available and it could have been done by now, but only small diameter borings have been done so far. He said he was told a year ago that all the data needed had been collected. He said the numbers went from 8,000 to 64,000 cubic yards of repair and there may even be more to the west and it needs to be evaluated.

Paul Kenny, East Bay Municipal Utility District, stated that his purpose at the meeting is to say that EBMUD is most interested in purchasing parcel A for a pumping plant in the future. He stated that the District has been working with Robin and Kris Leamy whom have been very cooperative. The district has found them to be very practical in their preliminary negotiations for the purchase of this parcel. He stated that he would be glad to answer any questions.

Commissioner Holt asked if EBMUD engineers have looked at the site as it relates to slide repair.

Mr. Kenny stated that the District has looked at the peer review conducted in the last several months.

Commissioner Holt asked if EBMUD saw any problems.

Mr. Kenny said the District had no comments.

Mr. Bowie stated that from what he has heard this evening it seemed that the neighbors should be the chief proponents of this project because if there is no project then the slide does not have to be repaired, and the homes may slide. He noted that Mr. Seidelman stated this is a feasible development site, but his concern is over fine tuning the scale and scope of what repair is actually going to be made. He said that he thinks this is a recommendation for this project not against it because everyone can agree that whatever conditions exist taking care of a landslide has to result in a better situation. Mr. Bowie directed the Commission's attention to the supplemental EIR page 55 where it states as landslides and unstable soils continue to be potential impacts to the current project the nature and scope of these impacts have been better defined by the current plan it is the opinion of the city and its consultant, Alan Kropp and associates, that the total collection of project documents and the analysis contained in this section provide an accurate and complete disclosure of the potential geotechnical impacts expected from a three lot subdivision at this stage of the review. Mr. Bowies reminded the Commission that this stage of CEQA review does not require that all experts agree. He said CEQA recognizes the possibility that the experts may disagree. He said that here the experts agree that it is feasible to develop the property. He said that all the experts agree on the repair of the landslide, which is a condition of the project. He said the dispute is whether or not the preliminary investigations are complete. Mr. Bowie noted that the City's own consultant has said they are complete. He said that Mr. Seidelman is not accurate in his comments stating that there has been only one test boring which was not enough to determine the geometry of the slide. He said that Mitch Wolfe confirmed that there have been four test borings, which have defined the geometry of the slide. He said the applicant's team has come up with a quantitative measurement of the amount of grading. Mr. Bowies said that if there was only one test boring and the geometry wasn't known then they could not have come up with the estimate of the quantity of soil involved.

Mr. Bowie stated that the conditions and the EIR suggest that this is an onsite stabilization program done in phases. He said the EIR and the staff materials indicate that the capacity for onsite storage is around 25,000 cubic yards. He said the conditions and mitigation measures more than adequately address any problems that might arise. He indicated that the level of work that has been done to date has been in excess of what one would normally do at this stage of the proceedings. He stated that the conditions of approval require that the landslide be repaired. Mr. Bowie suggested that no one does offsite studies in response to Mr. Seidelman's

comments. He said that the applicant would have had to have neighbor's permission to drill offsite at the applicant's expense and liability. He reiterated that is not unusual that they have not mapped landslides offsite.

Commissioner Holt asked to speak with the consulting geotechnical engineers.

Alan Kropp, peer reviewer for the City is a licensed geotechnical engineer.

Commissioner Holt stated there is obvious concern about the slides and asked if in Mr. Kropp's opinion the supplemental EIR is adequate in its mitigation of these issues at this stage.

Mr. Kropp stated that he believes at the tentative map stage there is adequate information. He said there are still some uncertainties. With further studies during the final map process there may be some changes but at the tentative maps stage it is adequate.

Commissioner Curtin-Tinley noted that the supplemental EIR on pages 48-51 summarize all the various studies, site inspections and mapping that was done. She said she has identified 6 or 7 tasks that have been done and asked Mr. Kropp to summarize the different analyses, mapping and investigation that have been performed.

Mr. Kropp stated that historically a lot of studies have been done to evaluate what are very clear and obvious shallow geology and landslide features. He said that it is only recently that the deeper exploration work has been done. He noted that the deeper exploration and some shallower work that would define the limits of bigger deeper slides at the edges, better understandings have come up with regard to some big features that are out there. He stated those bigger features are what Mitch Wolfe pointed out earlier and that is a double pronged landslide feature that merges into one feature and continues going offsite. He stated it is true that the July 2007 mapping by Purcell an Rhodes shows that landslide continuing offsite; it does not stop at the property line, it goes downhill. He indicated there is also a significant portion of one of the two prongs of the slides that continues down slope and there is also a significant portion of one of the prongs offsite on the property to the southwest, so there is offsite continuation of the slide downhill and some on the vacant property to the southwest.

Commissioner Holt asked Mr. Kropp if the slides can be adequately repaired.

Mr. Kropp said they are in different situations with regard to the down slope versus the lateral or upslope margin. As he understands it, this heavily wooded area is not going to be repaired, as it would require the removal of extensive vegetation to fix the offsite portion of the southwest. It would be rare for that to happen. He said the remaining repairs within the slide should generally stabilize the offsite portion to the southwest. He said if all the remaining slide material is removed up to the property line that should adequately constrain those slide materials from moving any farther onto the down slope properties.

Commissioner Chastain asked if the Commission really understands the nature of the problem. He said there is an admitted sense of the unknown about what is really going on there work but it will be examined further. He asked what should be examined and what needs to be accomplished.

Mr. Kropp replied that he agrees with Mr. Seidelman that further characterization is needed. He stated that he would assume that during the final map and lot development stage down hole logging would be done which is a much more effective tool in clearly defining depths of landslides. He said that large diameter borings would be appropriate at the next phase.

Commissioner Chastain asked if dewatering could be addressed once the issue is better known.

Mr. Kropp said that if he had to evaluate the risk to a downslope property from an existing landslide versus a repaired landslide that could cause settlement from dewatering, the unrepaired landslide is the bigger issue. He said dewatering is not an issue without merit but it can be addressed as part of the further study. Solutions could include a pump system or a shallower level of water withdrawal by gravity to the creek.

Commissioner Curtin-Tinley asked what could happen to the area if the slide was not remediated within the next ten years.

Mr. Kropp clarified that the question was regarding the double pronged landslide and stated that there is always uncertainty because it doesn't seem to have moved recently. Sometimes those large landslide complexes don't move for hundreds or thousands of years. He said the biggest concern is what might happen during a big earthquake. If earthquake-induced sliding happens, especially during a wet winter, you could get feet to tens of feet of movement that certainly would impact the Leamy property and to the extent that the landslide goes down into downslope properties, it could impact those as well. He said there is a portion of the landslide that goes across a corner of what is now identified as the building site for Parcel C. Some clarification with regards to the specific building location will be needed but it is a large building site. He said if a large earthquake in wet weather were to happen now, the worst case scenario is the slide would move.

Commissioner Humann asked if he would be correct if he said Mr. Kropp and Mr. Seidelman are more or less in agreement in terms of the extent landslide and the next level of testing that should occur, it's just that you disagree in when the testing should occur.

Mr. Kropp stated that they are in general agreement. He said the issues are what further study would have to be done and when. He said they probably would generally both agree that further study is warranted. He would say down the road and Mr. Seidelman thinks it should be done now.

Commissioner Curtin-Tinley asked if the extent of the study before them is typical for other projects. She asked if the preliminary site investigation is done at the tentative map stage and the more specific detailed borings are not done until a final map is approved because it is so costly.

Mr. Kropp stated that historically this has been the type of approach that would be taken for a project. He said we are in a transition phase. Down hole logging has been shown to be effective enough that it is becoming more common even at the tentative map stage, but it is still rare in his experience.

Commissioner Holt asked Mr. Wolfe to comment on the matter.

Mitchell Wolfe stated that he is a registered certified engineering geologist with over 25 years of experience working in the area. In fact, I used to work with Paul Seidelman. He said the level of subsurface exploration that has been competed to date is adequate for us to understand the issues and come up with conceptual methods for repairing them. He noted that Mr. Seidelman said that the one deep drilling was not adequate but suggested that he look at the work done in 2006 in a previous report by Purcell & Rhodes he would have seen that there were four other borings drilled all of which penetrated the slide mass extending into the underlying bedrock. He said they know that this slide is composed of slide debris and or colluvial soils extending a few feet into the underlying bedrock so we have a good handle at this stage of the project what subsurface geometry would be based on the one deep drilling that was done on the lower portion and the four that were done in the upper reaches of the slide in the vicinity of the road and the portion of the road above the slide. In his opinion there is sufficient information to understand what it will take to fix it. He said there will need to be additional geotechnical borings at the precise development stage of the project. He said there is plenty of information to proceed forward.

Commissioner Humann asked if Mr. Wolfe is in general agreement with Mr. Seidelman with respect to the extent and dynamics of the current slide.

Mr. Wolfe stated that he is in agreement.

Bowie stated that he spoke with Howard Martin and they have identified the sliver of land addressed in condition 22 and they are okay with it.

Vice Chair Lovitt asked the applicant and staff what process the City has to ensure a proper development takes place and what the timing looks like.

Ms. Sinnette stated that improvement plans will have to be prepared prior to a final map being recorded. She said the improvement plans will provide details on the remedial landslide repair, drainage system, the configuration and location of the roads and trails. She noted that all of the details that it takes to build a subdivision will be in a set of plans reviewed by the City Engineer.

Vice Chair Lovitt clarified that the City Engineer will receive full details of the complete plan for exploration, mitigation, and remediation as development may affect those things on the site.

Ms. Sinnette agreed with Vice Chair Lovitt's statement.

Commissioner Chastain asked about the issue that some of problems are not in the Environmental Impact Report and therefore mitigation is coming after we discover more about it. He said he is thinking particularly about dewatering that could potentially impact neighbors.

Ms. Sinnette stated that all impacts have been analyzed that are known at this stage. She stated that it is known that there are landslides that need to be repaired. She said the issue of the dewatering will be dealt with as part of the drainage plan. She said it will be mitigated by showing it with the grading plan that shows sub-drainage as well as surface drainage to make sure surface drainage is taken care.

Vice Chair Lovitt asked how it is known that by dewatering the existing slide that it is not going to create problems. He asked how the City will ensure the work is done properly.

Commissioner Holt indicated the Commission will have to rely on the geotechnical engineering.

Ms. Sinnette stated that the insurance is in mitigation measure 42 which is the mitigation measure dealing with geotechnical work. She said there are also conditions related to drainage and grading plans so those items will be mitigated. She said the impacts have been addressed, but that she doesn't consider the dewatering to be an impact.

Commissioner Chastain stated that it is an impact if what was said tonight was correct. He said dewatering could affect the neighboring house because the clay could dry out and then settlement would occur. He said he thinks it can be mitigated and he is not worried that the project is not feasible, but he is concerned with making sure there is a proper process and that it is clear what is trying to be mitigated. He indicated that there should be a condition that ensures once the situation is well known and understood any issues that the development produces will be mitigated.

Ms. Sinnette stated that condition 42 states that the City Engineer has final say in all remedial work required.

Commissioner Humann asked how a development that has been approved with an Environmental Impact Report and during construction a new situation comes up that will deviate from what was expected with regard to environmental impacts, would be handled.

Ms. Sinnette stated that if impacts are identified at a later date as part of the project then it is up to lead agency to determine if it is a significant impact and if it is a Supplemental Environmental Impact Report or an addendum to the original report would need to be done.

Vice Chair Lovitt said it is worth stating the process for all in attendance. He stated that the project is under the overall supervision of the City Engineer and he is really is control of what happens on the project.

Ms. Sinnette noted that was true, the City Engineer will work in conjunction with the project engineer, but the City Engineer has the final say.

Commissioner Chastain asked who determines the extent of the geotechnical investigation.

Ms. Sinnette stated the City Engineer in conjunction with Kropp and Associates.

Commissioner Humann indicated that he knows staff is comfortable moving forward based on the staff report, but asked the City Attorney if legally the City is comfortable moving forward.

Malathy Subramanian, City Attorney indicated that there can be a disagreement between consultants. She noted there does not seem to be a disagreement and that everyone seems to have agreed that additional testing will occur in the future. She said this is acceptable because the City is doing what they know at the time.

Vice Chair Lovitt closed the public portion of the hearing.

Commissioner Holt asked if staff is comfortable with the comment Mr. Bowie made regarding condition of approval 22 with regard to the easement.

Ms. Sinnette stated that it is the 1975 map that created this area of Happy Valley Road which is when the open space and trail easements were put in place. There was a requirement to dedicate that land in the 1975 map and it was never done.

Commissioner Curtin-Tinley asked the City Attorney to comment on the letter from Mr. Shaffer. She asked if the Commission could make a decision on the project or if they are limited to the EIR.

The City Attorney referred to the letter and stated that all of the City's records indicate that the EIR was certified. There is a letter from planning staff to Mr. Barsell, the previous owner, which states that the Planning Commissior certified the EIR. She stated there is a resolution from the City Council which references the Planning Commission certification of the EIR. She said the agenda description could be read in two different ways. It could be read that you are only considering the SEIR or it could be read that you are considering everything so out of an abundance of caution she suggested the Commission continue the item to make the final recommendation to the Council.

Vice Chair Lovitt asked for clarification from the City Attorney on the next steps the Commission should take.

The City Attorney clarified that the Commission can make their comments and any items that need to be addressed can be brought back either on consent or as a regular item. She said the agenda will be updated to clarify the confusion regarding what the Commission will act on.

Vice Chair Lovitt reiterated that the Commission is charged with reviewing the project and making comments, reviewing the Supplemental EIR and reviewing the conditions of approval. He stated that the Commission has seen all of the project information except for the new information in the geotechnical studies. He proposed the Commission begin review of the project to see if there are any issues with the ability to make findings.

Commissioner Holt acknowledged staff for their hard work. He said he can support the project. He is pleased that there are now three parcels to deal with. He thinks the neighbors' concerns regarding the instability of the dirt can be addressed to the point that the situation will be better that it is now.

Commissioner Curtin-Tinley stated there has been no opposition or concern with the project, there is only a concern for the timing of further geotechnical studies. She is in support of project and believes that the Supplemental EIR fully analyzes and suggests mitigation measures for the impacts. She said this level of review is adequate in her opinion for tentative maps. She noted that some of the neighbors were concerned that development could occur before the landslide is remediated and she said this is not true.

Commissioner Humann agreed with Commissioner Curtin-Tinley and stated that he feels comforted by the fact that so many people are concerned and will be watching what goes on to ensure nothing is done out of order.

Commissioner Chastain stated that he echoes all comments from his fellow Commissioners. He hoped that the information from the three geotechnical engineers is reviewed by the City Engineer so he can take a careful look at the nature of the investigation going forward, so what was talked about is captured, and so the City is being thorough.

Vice Chair Lovitt stated he has no concerns with the project and has nothing to add. He stated the next charge is to review the SEIR and asked for Commissioner comments.

Commissioner Curtin-Tinley noted that her concern with mitigation measures 2 and 3, regarding the authority being in two different jurisdictions, were addressed by the applicant.

Commissioner Holt stated he is not clear how the City of Orinda authority extends into Lafayette.

Ms. Sinnette stated that the property is within the boundary of the city of Lafayette and therefore in Lafayette's jurisdiction, however the access road is in Orinda's jurisdiction. She updated the Commission on the encroachment permit by stating that she confirmed with Orinda that all improvement have been done per the permit for the roadway. She said the road is safe as it is designed now. She said the City's traffic consultant noted that because of the project it would help to have additional signage, but it is up to Orinda to determine if they want additional signage.

Commissioner Chastain asked staff about the comment on condition 37 regarding the 100-year storm.

Ms. Sinnette stated that when the project was first reactivated there were some concerns about the way mitigations measures were written 20 years ago versus how they are written now with the level of technology and information. She said that the 100-year storm was taken from the old mitigation measure and she can confirm with the City Engineer to see if he feels it is still applicable. She stated that issue can be addressed in the responses to comments.

Vice Chair Lovitt asked if based on new geological updates the Commissioners have any special questions or would like to go through the conditions of approval.

There was no comment from the Commissioners.

Vice Chair Lovitt clarified that all comments heard tonight by the Commission, the consultants, and others will continue to get folded into the Supplemental EIR.

Ms. Sinnette indicated that was correct. She said after the 30-day public review period, which ends July 14, 2008, all oral and written comments will be responded to in writing.

Vice Chair Lovitt asked if both the comments and responses will be included in the SEIR.

Ms. Sinnette said yes, prior to the City Council making a final decision there will be a final SEIR including responses.

Commissioner Curtin-Tinley clarified that this is a process unique to this project because of the settlement agreement and the Commission will not see the final EIR.

Ms. Sinnette agreed with the statement.

Vice Chair Lovitt asked for direction regarding the motion the Commission should make.

The City Attorney stated the Commission will make a recommendation to the Council on the SEIR.

Vice Chair Lovitt clarified that the motion should contain a recommendation to the Council to approve the project, the SEIR, and the draft Conditions.

The City Attorney stated that should be the motion at the July 3, 2008 meeting and tonight's motion should be just continue the item to the July 3, 2008 meeting.

Vie Chair Lovitt confirmed that the Commission feels comfortable with this item going on consent calendar. He noted that if any issues come up it can be pulled and put up for discussion.

Commissioner Holt made a motion to continue the item to the July 3, 2008 Planning Commission meeting to go on consent calendar and recommend approval to City Council.

Commissioner Curtin-Tinley seconded the motion which carried. (5-0-0)

Commissioner Holt stated that he forgot to amend the agenda to include an additional item on the Commissioner Activity Report and asked staff if he could place it on the agenda now.

The City Attorney relayed that Commissioner Holt could give a brief update but not conduct a discussion unless the item needs action prior to the next meeting and came to his attention after the agenda was posted.

Commissioner Holt indicated that it was a discussion item and should be agendized for the July 3, 2008 meeting.

Commissioner Mitchell joined the meeting at 8:40p.m.

DRAFT

LAFAYETTE

# 4123 Happy Valley Road
# MS504-87CCII - Leamy

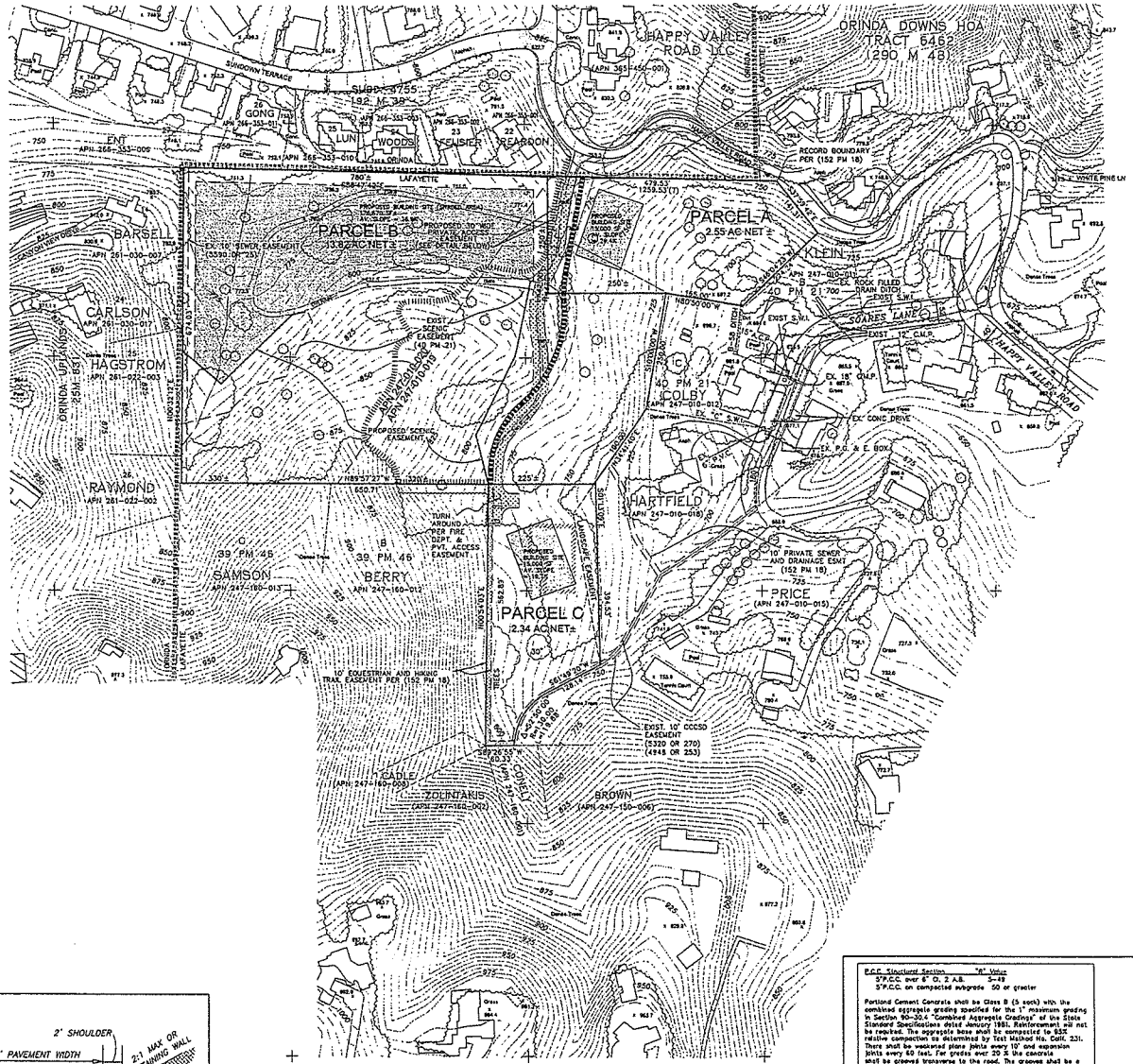
APN 247-010-019 & 20

N

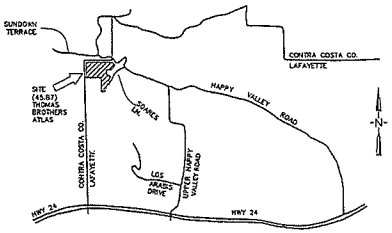
Scale: 1" = 200 '

CityGIS5

ATTACHMENT E




VICINITY MAP
(1" = 2200'±)



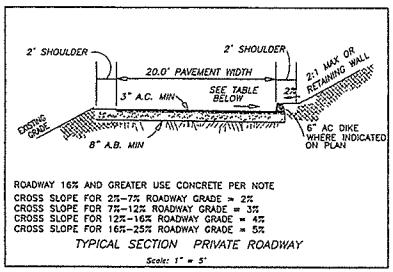

Lafayette, California

## GENERAL NOTES

| | |
|---|---|
| SITE: | ALL OF PARCEL 'D' AS SHOWN ON THE MAP OF SUBDIVISION MS. 2-74, FILED SEPTEMBER 25, 1975 IN BOOK 40 OF PARCEL MAPS, AT PAGE 21, CONTRA COSTA COUNTY RECORDS.<br>TOPOGRAPHY PER TENTATIVE MAP FOR SUBD. MS 504-87, DATED APRIL 1987 |
| OWNER: | ROBIN LEAHY |
| ENGINEER: | SCHELL & MARTIN, INC.<br>CIVIL ENGINEERING & LAND SURVEYING<br>3377 MT. DIABLO BLVD.<br>LAFAYETTE, CALIFORNIA 94549<br>(925) 283-6111 |
| ASSESSOR NO.: | A.P.N. 247-010-019, 020 |
| EXISTING ZONING: | (R-40) SINGLE FAMILY RESIDENTIAL |
| PROPOSED USE: | (R-40) SINGLE FAMILY RESIDENTIAL |
| AREA: | 18.23 ACRES ± TOTAL (RECORD) |
| UTILITIES: | WATER : E.B.M.U.D.<br>SEWER : C.C.C.S.D.<br>POWER : P.G.& E.<br>TELEPHONE: PACIFIC BELL |
| CONTOUR INTERVAL: | TEN (10) FEET |
| BASIS OF ELEVATION: | CONTRA COSTA COUNTY DATUM |

## LEGEND

| | |
|---|---|
| — — — | CITY/COUNTY BOUNDARY |
| ——— | LOT BOUNDARY |
| — — 500 — — | EXISTING CONTOUR |
| | 10' EQUESTRIAN AND HIKING TRAIL EASEMENT PER (152 PM 18) |
| | DENOTES 10' TRAIL EASEMENT PER (152 PM 18) TO BE ABANDONED |
| P.U.E. | PUBLIC UTILITY EASEMENT |
| S.S.E. | SANITARY SEWER EASEMENT. |
| S.W.I. | STORM WATER INLET |
| | APPROX. PROPOSED HOMESITE LOCATION. |
| | DENOTES PROPOSED 30' WIDE PRIVATE ACCESS EASEMENT |
| | DENOTES PROPOSED 10' WIDE TRAIL EASEMENT |

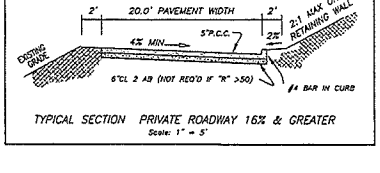



ROADWAY 16% AND GREATER USE CONCRETE PER NOTE
CROSS SLOPE FOR 2%-7% ROADWAY GRADE = 2%
CROSS SLOPE FOR 7%-12% ROADWAY GRADE = 3%
CROSS SLOPE FOR 12%-16% ROADWAY GRADE = 4%
CROSS SLOPE FOR 16%-25% ROADWAY GRADE = 5%

TYPICAL SECTION PRIVATE ROADWAY
Scale: 1" = 5'

| P.C.C. Structural Section | "R" Value |
|---|---|
| 5"P.C.C. over 6" O. 2 A.B. | 5-49 |
| 5"P.C.C. on compacted subgrade | 50 or greater |

Portland Cement Concrete shall be Class B (5 sack) with the combined aggregate grading specified for the 1" maximum grading in Section 90-10.4 "Combined Aggregate Gradings" of the State Standard Specifications dated January 1981. Reinforcement will not be required. The aggregate base shall be compacted to 95% relative compaction as determined by Test Method No. Calif. 231. There shall be weakened plane joints every 10' and expansion joints every 40 feet. For grades over 20 % the cascrete shall be grooved transverse to the road. The grooves shall be a minimum 1/4" deep at 4" maximum intervals.




TYPICAL SECTION PRIVATE ROADWAY 16% & GREATER
Scale: 1" = 5'

RECEIVED
MAY 06 2008
CITY OF LAFAYETTE
PLANNING DEPT.

REV.: 4-25-08
REV.: 3-28-08

TENTATIVE MAP
SUBDIVISION MS 504-87
RESUBDIVISION OF PARCEL D
40 PM 21
CITY OF LAFAYETTE
CONTRA COSTA COUNTY, CALIFORNIA

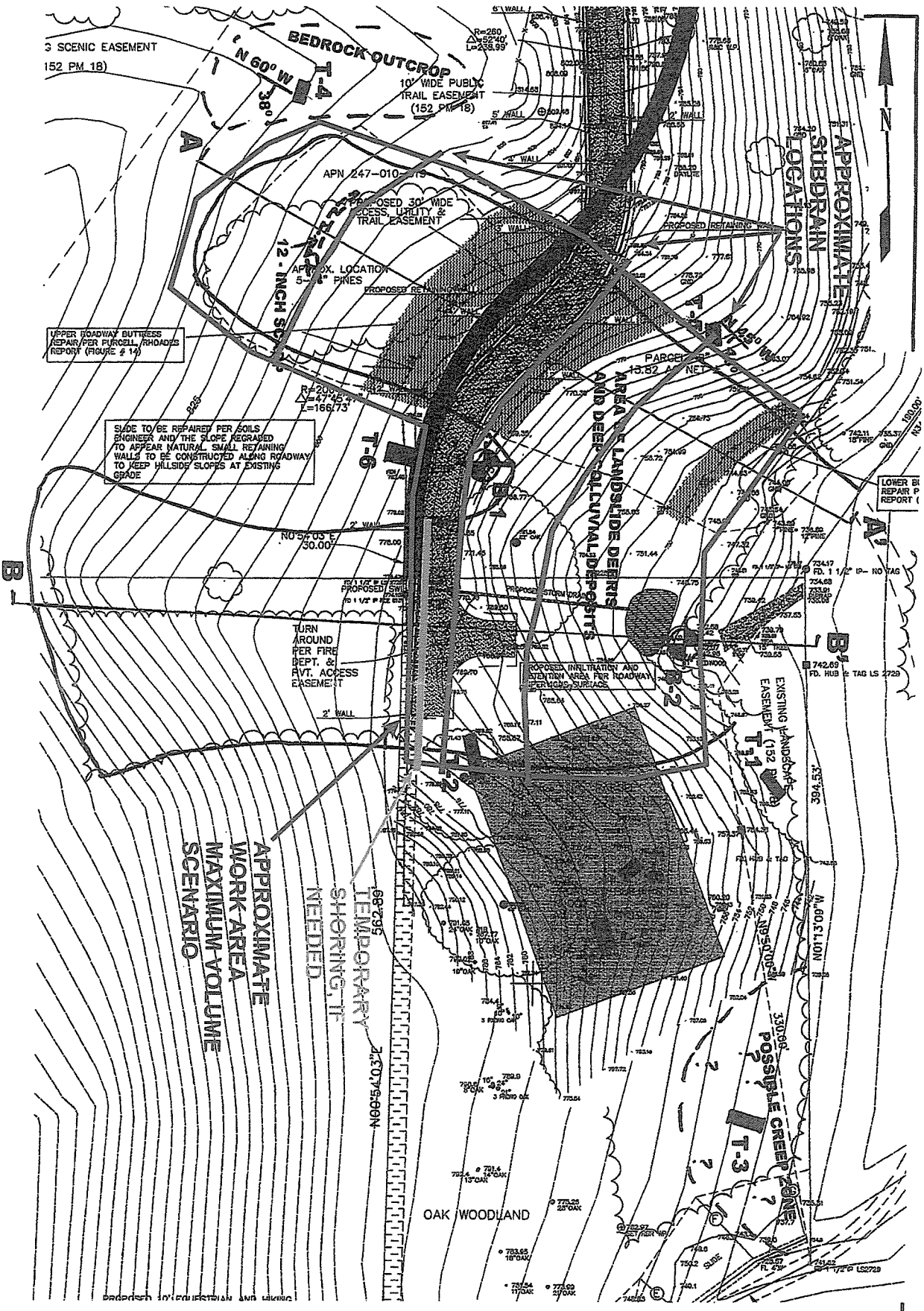
SCHELL AND MARTIN, INC.
LAND SURVEYING AND CIVIL ENGINEERING
3377 MT. DIABLO BOULEVARD
LAFAYETTE, CALIFORNIA 925-283-6111

FOR: ROBIN LEAHY

BY: HGM FB: 509 PG: 1-8,68-75 JOB# 430-05A
DATE: 6-15-05 SCALE: 1" = 100' SHEET 1 OF 1

ATTACHMENT F

ATTACHMENT G


BEDROCK OUTCROP
N 60° W
3.8°
T-4
10' WIDE PUBLIC TRAIL EASEMENT (152 PM 18)
APN 247-010-
PROPOSED 30' WIDE ACCESS, UTILITY & TRAIL EASEMENT
APPROX. LOCATION 5-6" PINES
12" INCH SCRUB OAK
UPPER ROADWAY BUTTRESS REPAIR PER PURCELL, RHOADES REPORT (FIGURE # 14)
R=200' Δ=47°45'4" L=166.73'
SLIDE TO BE REPAIRED PER SOILS ENGINEER AND THE SLOPE REGRADED TO APPEAR NATURAL. SMALL RETAINING WALLS TO BE CONSTRUCTED ALONG ROADWAY TO KEEP HILLSIDE SLOPES AT EXISTING GRADE
T-6
N0°54'03"E 30.00'
TURN AROUND PER FIRE DEPT. & PVT. ACCESS EASEMENT
PROPOSED INFILTRATION AND DETENTION AREA FOR ROADWAY RUNOFF
EXISTING LANDSCAPE EASEMENT (152 PM 18)
T-1
T-2
T-3
APPROXIMATE WORK AREA MAXIMUM VOLUME SCENARIO
TEMPORARY SHORING IF NEEDED
N89°54'03"E 365.89'
OAK WOODLAND
POSSIBLE CREEP ZONE
330.98'
N11°13'09"W
N19°50'06"W
394.55'
APPROXIMATE LANDSLIDE DEBRIS AREA AND DEEP COLLUVIAL DEPOSITS
SUBDRAIN LOCATIONS
PARCEL 2 13.82 AC NET
PROPOSED RETAINING WALL
742.69 FD. HUB & TAG LS 2729
N

DRAWING REVISED 2/19/08

| | | | |
|---|---|---|---|
| SCALE 1" = 50' | DATE | JULY 2007 | Purcell, Rhoades & Associates<br>Consultants in the Applied Earth Sciences |
| | JOB NO. | 7251-01 | |
| | DWG NO. | L725101FIG1 | **SITE PLAN AND FIELD INVESTIGATIONS**<br>MS 504-87, 4123 UPPER HAPPY VALLEY ROAD<br>LAFAYETTE, CALIFORNIA |
| | DRAWN | IDA | |
| | CHKD. | DJR | |
| | APP'D | DJR | |
| CLIENT | | LS PROPERTIES, LP | |

FIGURE NO. 1

REV. NO.

TEMPORARY STOCKPILE AREA
PER PURCELL & RHOADES & ASSOCIATES
APPROXIMATE STOCKPILE VOLUME = 24,400 CUBIC YARDS±
PARCEL B
13.82 AC NET ±
PROPOSED BUILDING SITE (SHADED AREA)
176,670 SF±
AV. SLOPE = 16.9%
PROPOSED RETENTION BASIN TO MITIGATE EXISTING DRAINAGE CONDITION AND CAPTURE RUNOFF FROM PROPOSED DEVELOPMENT (SIZE TO BE DETERMINED BY HYDROLOGIC CALCULATIONS
PROPOSED RESIDENCE ON PARCEL B TO BE LOCATED AWAY FROM SLIDE PER SOILS REPORT
PROPOSED 10' WIDE TRAIL EASEMENT
PROPOSED 20' WIDE ASPHALT DRIVE MAXIMUM SLOPE = 15.5%
24,390 SQ.FT±
EXISTING SCENIC EASEMENT (152 PM 18) 259,148 S.F.± TOTAL
10' WIDE PUBLIC TRAIL EASEMENT (152 PM 18)
PROPOSED 30' WIDE ACCESS & UTILITY EASEMENT
APPROXIMATE WORK AREA MAXIMUM VOLUME SCENARIO PER PURCELL RHOADES
PROPOSED SCENIC EASEMENT 259,258 S.F.± TOTAL
APPROXIMATE SUBDRAIN LOCATION PER PURCELL RHOADES
APPROX. LOCATION 5-36" PINES
PROPOSED RETAINING WALL
PARCEL D
13.82 AC NET ±
APPROXIMATE SUBDRAIN LOCATIONS PER PURCELL RHOADES
EXISTING 10' WIDE TRAIL EASEMENT TO BE ABANDONED.
TURN AROUND PER FIRE DEPT. &/ AVT. ACCESS EASEMENT
PARCEL C
PARCEL A
PROPOSED DRIVEWAY TURNOUT TO PARCEL "B"
DIRECT ROAD RUNOFF TO PROPOSED GRASSY LINED SWALE
EXISTING DIRT ROAD
CALCULATED STRUCTURE SETBACK LINE
25' SETBACK LINE
EX. 10' SEWER EASEMENT (5550 OR 25)
EXISTING 1' WIDE, 2' DEEP ROCK LINED CHANNEL
ROCK SPILLWAY
LOT 14 BARSELL APN 261-050-007
LOT 24 CARLSON APN 261-050-017
LOT 25 HAGSTROM APN 261-022-003
LOT 26 RAYMOND APN 261-022-002
PARCEL C 39 PM 45 SAMSON
LOT 25 LUN APN 266-353-010 TRACT 4755
LOT 24 WOODS APN 266-353-003 (192 M 38)
FEUSIER APN 266-353-002
LOT 22 REARDON APN 266-353-001
APN 247-010-019
APN 247-010-020
N89°57'27"W 650.70' (T)
320'±
N0°5'03"E 30.00'
N71°?'E 45.00'
S57°?'W 210.00'
S27°?'W 202.5'
R=260 Δ=?°?'? L=?.??'
R=200 Δ=47°45'47" L=166.73'
EXISTING GATE
EXISTING EASEMENT

ARTICLE 5. CREEK SETBACK REQUIREMENTS

6-1841 STRUCTURE SETBACK

(a) AS DEFINED BY SECTION 6-312 AND SECTION 8-355, BUILDINGS AND STRUCTURES SHALL BE SET BACK FROM AN UNIMPROVED CREEK CHANNEL AS FOLLOWS:

1) CHANNEL DEPTH OF 0-21 FEET: IF THE SIDE SLOPES OF THE CHANNEL ARE STEEPER THAN 2:1 (HORIZONTAL-VERTICAL), THE WIDTH OF THE STRUCTURE SETBACK IS DETERMINED BY A LINE MEASURED FROM THE TOE OF THE SLOPE A DISTANCE OF TWICE THE CHANNEL DEPTH PLUS THE APPROPRIATE TOP-OF-BANK SETBACK AS FOLLOWS:

| CHANNEL DEPTH (FEET) | TOP OF BANK SETBACK MINIMUM WIDTH (FEET) |
|---|---|
| 0-6 | 12 EACH SIDE |
| 6-12 | 15 EACH SIDE |
| 12-18 | 18 EACH SIDE |
| 18-21 | 21 EACH SIDE |

IF THE SIDE SLOPES OF THE CHANNEL ARE FLATTER THAN 2:1 (HORIZONTAL-VERTICAL) THE STRUCTURE SETBACK IS THE APPROPRIATE SETBACK INDICATED IN THE TABLE ABOVE, MEASURED FROM THE TOP OF THE BANK.

2) CHANNEL DEPTH EXCEEDING 21 FEET: IF THE DEPTH OF THE CHANNEL EXCEEDS 21 FEET, THE WIDTH OF THE STRUCTURE SETBACK IS DETERMINED BY MEASURING FROM THE TOE OF THE SLOPE A DISTANCE OF THREE TIMES THE CHANNEL DEPTH.

(b) IF A PARCEL IS SUBJECT TO SUBDIVISION EASEMENTS OR SETBACK REQUIREMENTS UNDER CONTRA COSTA COUNTY ORDINANCE CODE SECTIONS 914-10.406 THROUGH 914-10.408 AND INCONSISTENT WITH SUBSECTION (a) ABOVE, THOSE SUBDIVISION REQUIREMENTS CONTROL.

(c) NO PERMANENT STRUCTURE OTHER THAN FENCES AND DRAINAGE AND EROSION PROTECTION IMPROVEMENTS MAY BE CONSTRUCTED WITHIN THE SETBACK AREA. (ORD. 368 § 1 (PART), 1985)

(H) DEPTH = 776.99'-772.49' = 4.5'
DISTANCE = 10.0'
SLOPE = 4.5'/10.0' = 45% ; FLATTER THAN 2:1
SETBACK = (2x4.5') + 12' = 21.0' FROM TOE OF SLOPE

(I) DEPTH = 780.81'-775.78' = 5.0'
DISTANCE = 11.0'
SLOPE = 5.0' / 11.0' = 45% ; FLATTER THAN 2:1
SETBACK = (2x5.0') + 12' = 22.0' FROM TOE OF SLOPE

(J) DEPTH = 792.23'-786.4' = 5.8'
DISTANCE = 20.1'
SLOPE = 5.8'/20.1' = 29% FLATTER THAN 2:1
SETBACK = (2x5.8') + 12' = 23.6' FROM TOE OF SLOPE

(K) DEPTH = 796.18'-792.05' = 4.1'
DISTANCE = 23.5'
SLOPE = 4.1' / 23.5' = 17% FLATTER THAN 2:1
SETBACK = (2x4.1') + 12' = 20.2' FROM TOE OF SLOPE

(L) DEPTH = 796.25'-792.19' = 4.1'
DISTANCE = 10.0'
SLOPE = 4.1' / 10.0' = 41% FLATTER THAN 2:1
SETBACK = (2x4.1') + 12' = 20.2' FROM TOE OF SLOPE

(M) DEPTH = 783.14' - 781.86' = 1.2'
DISTANCE = 18.0'
SLOPE = 1.2 / 18.0' = 7% FLATTER THAN 2:1
SETBACK = (2x1.2') + 12' = 14.4' FROM TOE OF SLOPE

(N) DEPTH = 779.95' - 775.58 '= 4.4'
DISTANCE = 10.5'
SLOPE = 4.4' / 10.5' = 42% FLATTER THAN 2:1
SETBACK = (2x4.4') + 12' = 20.8' FROM TOE OF SLOPE

(O) DEPTH = 776.31' 772.49' = 3.8'
DISTANCE = 9.5'
SLOPE = 3.8 / 9.5' = 40% FLATTER THAN 2:1
SETBACK = (2x3.8') + 12' = 19.6' FROM TOE OF SLOPE

LEGEND

- 775 EXISTING CONTOUR
- (780) PROPOSED CONTOUR
- 770.35 EXISTING SPOT ELEVATION
- DENOTES EXISTING ASPHALT PAVING
- DENOTES NEW PAVEMENT SURFACE
- DENOTES NEW DRIVEWAY TURNOUTS
- DENOTES EXISTING TRAIL EASEMENT TO BE ABANDONED.
- DENOTES BUILDING SITE
- DENOTES SLOPE BUTTRESS
- DENOTES PROPOSED 10' WIDE TRAIL EASEMENT

LANDSLIDE FEATURE PER REPORT BY PURCELL RHOADES & ASSOCIATES "GEOTECHNICAL STUDY UPDATE, PROPOSED SINGLE FAMILY DEVELOPMENT PARCELS A, B AND C, HAPPY VALLEY ROAD, MS 504-87 APN 247-010-019 & 020, LAFAYETTE, CALIFORNIA PROJECT NO. 12-215/7251-01, JUNE 1, 2006

NOTE: ALL PARCELS TO HAVE WATER RETENTION SYSTEMS THAT WILL LIMIT THE AMOUNT OF RUNOFF FROM IMPERVIOUS SURFACES TO BE NO GREATER THAN RUNOFF THAT WOULD OCCUR IN THE SITE'S NATURAL HILLSIDE STATE. CONTRA COSTA CLEAN WATER ACT REQUIREMENTS FOR INFILTRATION WILL BE MET FOR IMPERVIOUS SURFACES WITH GRASSY SWALES AND OTHER APPROVED SYSTEMS.

TOPOGRAPHY AND CONTOUR NOTE:
Those portions of this map shown with a 5' contour interval were prepared using computer assisted, photogrammetric methods by HJW GeoSpatial, Inc., in Oakland California. In areas of dense vegetation, accuracy of contours may deviate from accepted accuracy standards.

Trees and drainage information have been field shot within portions of this area and can be identified by a spot elevation and in some instances a description.

Those portions of this map showing a 2' contour interval and spot elevations were field shot by Schell and Martin, Inc.

# PRELIMINARY GRADING, DRAINAGE AND IMPROVEMENT PLANS
## SUBDIVISION MS 504-87
## RESUBDIVISION OF PARCEL D
## 40 PM 21
## CITY OF LAFAYETTE
## CONTRA COSTA COUNTY, CALIFORNIA

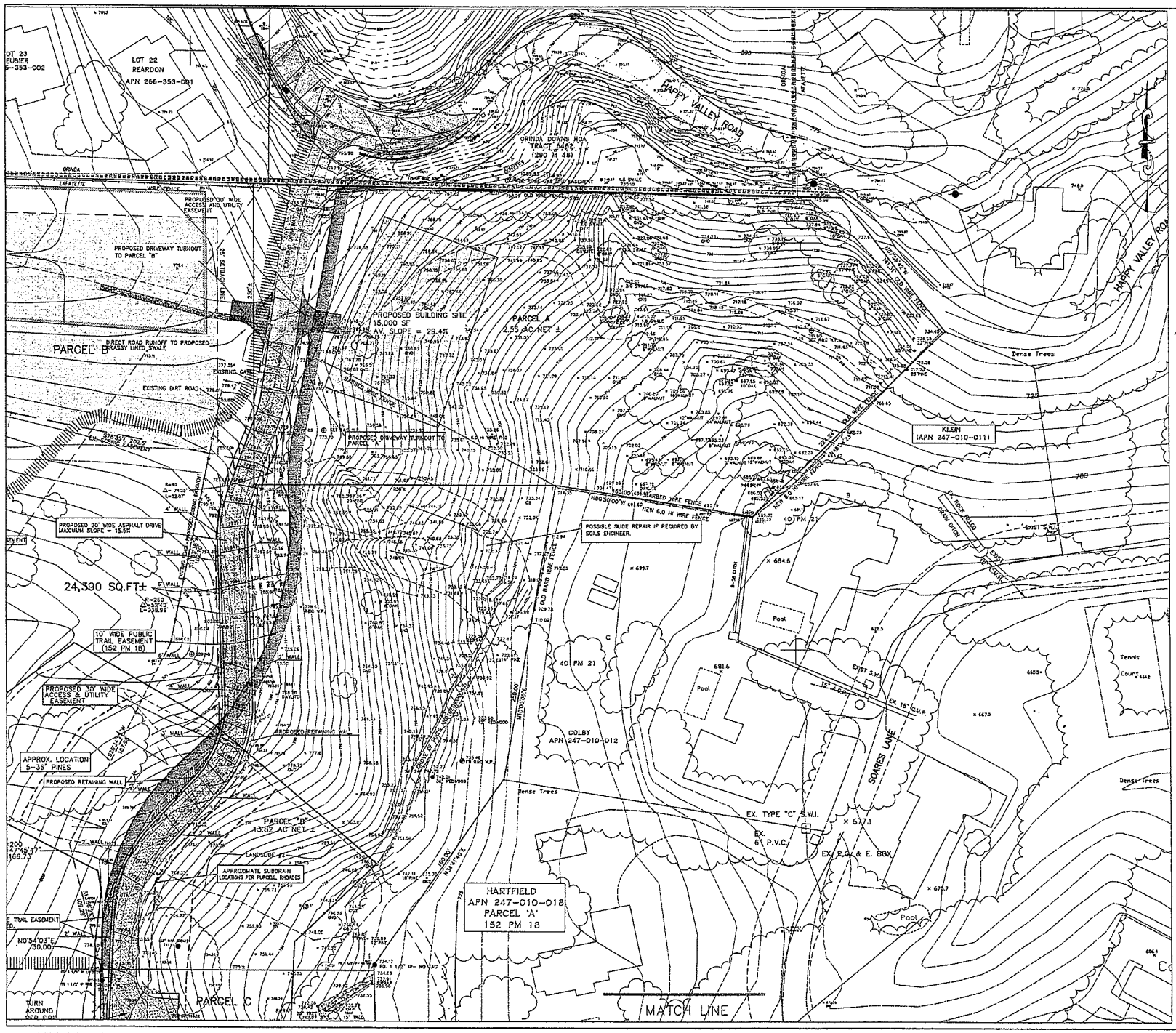
REV:04-25-08
REV: 3-28-08


SCHELL AND MARTIN, INC.
LAND SURVEYING AND CIVIL ENGINEERING
3377 MT. DIABLO BOULEVARD
LAFAYETTE, CALIFORNIA 925-283-8111


FOR: ROBIN LEAHY

BY: MCM FB: 503 PG: 1-8,68-75 JOB# 430-05A
DATE: 06-15-06 SCALE: 1" = 30' SHEET 1 OF 3

ATTACHMENT H




LEGEND

- EXISTING CONTOUR
- PROPOSED CONTOUR
- EXISTING SPOT ELEVATION
- DENOTES EXISTING ASPHALT PAVING
- DENOTES NEW PAVEMENT SURFACE
- DENOTES NEW DRIVEWAY TURNOUTS
- DENOTES EXISTING TRAIL EASEMENT TO BE ABANDON
- DENOTES BUILDING SITE
- DENOTES SLIDE BUTTRESS
- DENOTES PROPOSED 10' WIDE TRAIL EASEMENT

LANDSLIDE FEATURE PER REPORT BY PURCELL RHOADES & ASSOCIATES "GEOTECHNICAL STUDY UPDATE, PROPOSED SINGLE FAMILY DEVELOPMENT PARCELS A, B AND C, HAPPY VALLEY ROAD, MS 504-87 APN 247-010-019 & 025, LAFAYETTE, CALIFORNIA, PROJECT NO. 12-215/7251-01, JUNE 1, 2005

NOTE: ALL PARCELS TO HAVE WATER RETENTION SYSTEMS THAT WILL LIMIT THE AMOUNT OF RUNOFF FROM IMPERVIOUS SURFACES TO BE NO GREATER THAN RUNOFF THAT WOULD OCCUR IN THE SITE'S NATURAL HILLSIDE STATE. CONTRA COSTA CLEAN WATER C.3 REQUIREMENTS FOR INFILTRATION WILL BE MET FOR IMPERVIOUS SURFACES WITH GRASSY SWALES AND OTHER APPROVED SYSTEMS.

TOPOGRAPHY AND CONTOUR NOTE:
Those portions of this map shown with a 5' contour interval were prepared using computer assisted, photogrammetric methods by HJW GeoSpatial, Inc., in Oakland California. In areas of dense vegetation, accuracy of contours may deviate from accepted accuracy standards.

Trees and drainage information have been field shot within portions of this area and can be identified by a spot elevation and in some instances a description.

Those portions of this map showing a 2' contour interval and spot elevations were field shot by Schell and Martin, Inc.

# PRELIMIRARY GRADING, DRAINAGE AND IMPROVEMENT PLANS SUBDIVISION MS 504-87 RESUBDIVISION OF PARCEL D 40 PM 21 CITY OF LAFAYETTE CONTRA COSTA COUNTY, CALIFORNIA

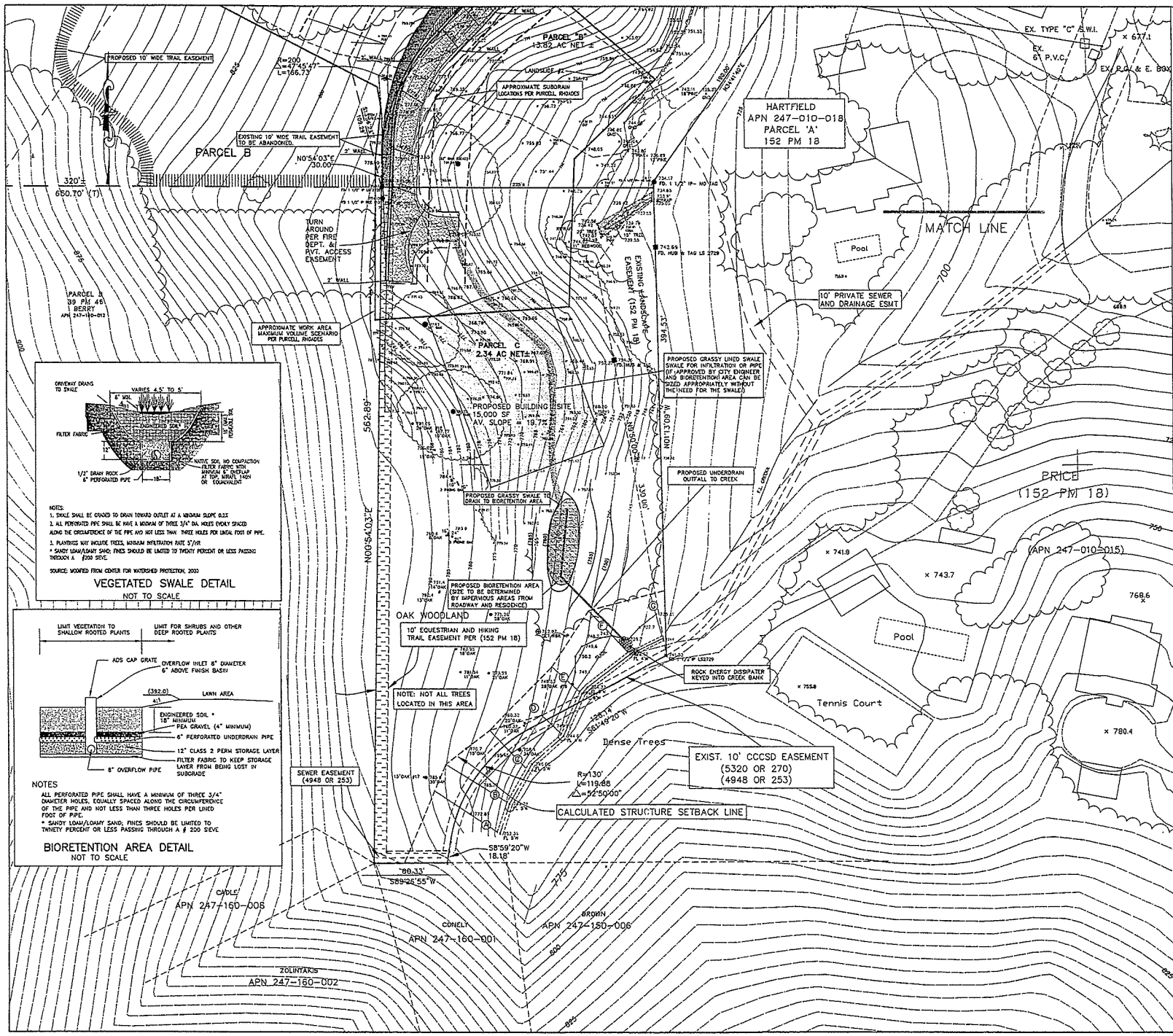
REV:04-25-08
REV: 3-28-08


SCHELL AND MARTIN, INC.
LAND SURVEYING AND CIVIL ENGINEERING
3377 MT. DIABLO BOULEVARD
LAFAYETTE, CALIFORNIA 925-283-8111


FOR: ROBIN LEMAY

BY: HGM FB: 502 PG: 1-8,65-75 JOB# 430-054

DATE: 06-15-06 SCALE: 1" = 30' SHEET 2 OF 3







NOTES:
1. SWALE SHALL BE GRADED TO DRAIN TOWARD OUTLET AT A MINIMUM SLOPE 0.5%
2. ALL PERFORATED PIPE SHALL BE HAVE A MINIMUM OF THREE 3/4" DIA. HOLES EVENLY SPACED ALONG THE CIRCUMFERENCE OF THE PIPE AND NOT LESS THAN THREE HOLES PER LINEAL FOOT OF PIPE.
3. PLANTINGS MAY INCLUDE TREES, MINIMUM INFILTRATION RATE 5"/HR
* SANDY LOAM/LOAMY SAND; FINES SHOULD BE LIMITED TO TWENTY PERCENT OR LESS PASSING THROUGH A #200 SIEVE.

SOURCE: MODIFIED FROM CENTER FOR WATERSHED PROTECTION, 2003

## VEGETATED SWALE DETAIL
NOT TO SCALE


LIMIT VEGETATION TO SHALLOW ROOTED PLANTS
LIMIT FOR SHRUBS AND OTHER DEEP ROOTED PLANTS
ADS CAP GRATE
OVERFLOW INLET 8" DIAMETER 6" ABOVE FINISH BASIN
(392.0)
LAWN AREA
4:1
ENGINEERED SOIL * 18" MINIMUM
PEA GRAVEL (4" MINIMUM)
6" PERFORATED UNDERDRAIN PIPE
12" CLASS 2 PERM STORAGE LAYER
FILTER FABRIC TO KEEP STORAGE LAYER FROM BEING LOST IN SUBGRADE
8" OVERFLOW PIPE

NOTES
ALL PERFORATED PIPE SHALL HAVE A MINIMUM OF THREE 3/4" DIAMETER HOLES, EQUALLY SPACED ALONG THE CIRCUMFERENCE OF THE PIPE AND NOT LESS THAN THREE HOLES PER LINEAL FOOT OF PIPE.
* SANDY LOAM/LOAMY SAND; FINES SHOULD BE LIMITED TO TWENTY PERCENT OR LESS PASSING THROUGH A # 200 SIEVE

## BIORETENTION AREA DETAIL
NOT TO SCALE

### ARTICLE 5. CREEK SETBACK REQUIREMENTS

6-1841 STRUCTURE SETBACK

(a) AS DEFINED BY SECTION 6-312 AND SECTION 6-355, BUILDINGS AND STRUCTURES SHALL BE SET BACK FROM AN UNIMPROVED CREEK CHANNEL AS FOLLOWS:

1) CHANNEL DEPTH OF 0-21 FEET. IF THE SIDE SLOPES OF THE CHANNEL ARE STEEPER THAN 2:1 (HORIZONTAL:VERTICAL), THE WIDTH OF THE STRUCTURE SETBACK IS DETERMINED BY A LINE MEASURED FROM THE TOE OF THE SLOPE A DISTANCE OF TWICE THE CHANNEL DEPTH PLUS THE APPROPRIATE TOP-OF-BANK SETBACK AS FOLLOWS:

| CHANNEL DEPTH (FEET) | TOP OF BANK SETBACK MINIMUM WIDTH (FEET) |
|---|---|
| 0-6 | 12 EACH SIDE |
| 6-12 | 15 EACH SIDE |
| 12-18 | 18 EACH SIDE |
| 18-21 | 21 EACH SIDE |

IF THE SIDE SLOPES OF THE CHANNEL ARE FLATTER THAN 2:1 (HORIZONTAL:VERTICAL) THE STRUCTURE SETBACK IS THE APPROPRIATE SETBACK INDICATED IN THE TABLE ABOVE, MEASURED FROM THE TOP OF THE BANK.

2) CHANNEL DEPTH EXCEEDING 21 FEET. IF THE DEPTH OF THE CHANNEL EXCEEDS 21 FEET, THE WIDTH OF THE STRUCTURE SETBACK IS DETERMINED BY MEASURING FROM THE TOE OF THE SLOPE A DISTANCE OF THREE TIMES THE CHANNEL DEPTH.

(b) IF A PARCEL IS SUBJECT TO SUBDIVISION EASEMENTS OR SETBACK REQUIREMENTS UNDER CONTRA COSTA COUNTY ORDINANCE CODE SECTIONS 914-14.604 THROUGH 10.606 WHICH ARE INCONSISTENT WITH SUBSECTION (a) ABOVE, THOSE SUBDIVISION REQUIREMENTS CONTROL.

(c) NO PERMANENT STRUCTURE OTHER THAN FENCES AND DRAINAGE AND EROSION PROTECTION IMPROVEMENTS MAY BE CONSTRUCTED WITHIN THE SETBACK AREA. (ORD. 368 § 1 (PART), 1955)

(A) DEPTH = 772.9' - 752.4' = 20.5'
DISTANCE = 28.0'
SLOPE = 20.5/28.0 = 73% ; STEEPER THAN 2:1
SETBACK = (2x20.5) + 21 = 62.0' FROM TOE OF SLOPE

(B) DEPTH = 768.7 - 749.4 = 19.3'
DISTANCE = 28.0'
SLOPE = 19.3 / 28.0 = 68% ; STEEPER THAN 2:1
SETBACK = (2x19.3) + 21 = 59.6' FROM TOE OF SLOPE

(C) DEPTH = 759.5' - 746.7' = 12.8'
DISTANCE = 17.7'
SLOPE = 12.8/17.7 = 72% STEEPER THAN 2:1
SETBACK = (2x12.8)+18 = 43.6' FROM TOE OF SLOPE

(D) DEPTH = 749.9' - 744.6' = 5.2'
DISTANCE = 9.5'
SLOPE = 5.2/9.5 = 54.7% STEEPER THAN 2:1
SETBACK = (2x5.2)+12 = 22.4' FROM TOE OF SLOPE

(E) DEPTH = 748.5' - 740.4' = 8.1'
DISTANCE = 9.0'
SLOPE = 8.1/9.0 = 90% STEEPER THAN 2:1
SETBACK = (2x8.1)+15 = 31.2' FROM TOE OF SLOPE

(F) DEPTH = 743.4' - 728.6' = 14.8'
DISTANCE = 18.9'
SLOPE = 14.8/18.9 = 78% STEEPER THAN 2:1
SETBACK = (2x14.8)+18 = 47.6' FROM TOE OF SLOPE

(G) DEPTH = 735.3' - 724.6' = 10.7'
DISTANCE = 18.6'
SLOPE = 10.7/18.6 = 57% STEEPER THAN 2:1
SETBACK = (2x10.7)+15 = 36.4' FROM TOE OF SLOPE

LEGEND
- 775 — EXISTING CONTOUR
- (790) — PROPOSED CONTOUR
- ×720.33 — EXISTING SPOT ELEVATION
- DENOTES EXISTING ASPHALT PAVING
- DENOTES NEW PAVEMENT SURFACE
- DENOTES NEW DRIVEWAY TURNOUTS
- DENOTES EXISTING TRAIL EASEMENT TO BE ABANDONED
- DENOTES BUILDING SITE
- DENOTES SLOPE BUTTRESS
- DENOTES PROPOSED 10' WIDE TRAIL EASEMENT

LANDSLIDE FEATURE PER REPORT BY PARCELL, RHOADES & ASSOCIATES GEOTECHNICAL STUDY UPDATE, PROPOSED SINGLE FAMILY DEVELOPMENT PARCELS A, B AND C, HAPPY VALLEY ROAD, MS 504-87 APN 247-010-018 & 020, LAFAYETTE, CALIFORNIA PROJECT NO. 12-219/7231-01, JUNE 1, 2006

NOTE: ALL PARCELS TO HAVE WATER RETENTION SYSTEMS THAT WILL LIMIT THE AMOUNT OF RUNOFF FROM IMPERVIOUS SURFACES TO BE NO GREATER THAN RUNOFF THAT WOULD OCCUR IN THE SITE'S NATURAL HILLSIDE STATE. CONTRA COSTA CLEAN WATER C.3 REQUIRES FOR INFILTRATION WILL BE MET FOR IMPERVIOUS SURFACES WITH GRASSY SWALES AND OTHER APPROVED SYSTEMS.

TOPOGRAPHY AND CONTOUR NOTE:
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Trees and drainage information have been field shot within portions of this area and can be identified by a spot elevation and in some instances a description.

Those portions of this map showing a 2' contour interval and spot elevations were field shot by Schell and Martin, Inc.

# PRELIMIRARY GRADING, DRAINAGE AND IMPROVEMENT PLANS
## SUBDIVISION MS 504-87
## RESUBDIVISION OF PARCEL D
## 40 PM 21
## CITY OF LAFAYETTE
## CONTRA COSTA COUNTY, CALIFORNIA

REV:04-25-08
REV: 3-28-08


SCHELL AND MARTIN, INC.
LAND SURVEYING AND CIVIL ENGINEERING
3377 MT. DIABLO BOULEVARD
LAFAYETTE, CALIFORNIA 925-283-8111


FOR: ROBIN LEAHY

BY: HJW FB: 509 PG: 1-8,68-75 J098 430-054
DATE: 08-15-08 SCALE: 1" = 30' SHEET 3 OF 3


J:\PROJECTS\J098\2005\08-BUILDING TEMPLATE.DWG MAY 2008.dwg Tue May 06 15:05:52 2008

**DRAFT CONDITIONS OF APPROVAL FOR MS504-87CCII**

**4123 HAPPY VALLEY ROAD; APN 247-010-019 and 020**

*Project specific conditions of approval are shaded.*

| | GENERAL AND ONGOING CONDITIONS | FOR STAFF USE ONLY |
|---|---|---|
| 1. | In these conditions of approval, "applicant" is Robin and Kris Leamy, or their successors and assigns. | General or ongoing condition. |
| 2. | This parcel map shall expire twenty-four months after the date of approval unless a completed final map in substantial compliance with the approved parcel map, dated received May 6, 2008, as may be amended by these conditions, is filed with the City Engineering Services Manager. Upon application by the subdivider, filed before the expiration of the parcel map, the Planning Commission may extend this expiration date for a period or periods totaling not more than twenty-four months after the original expiration date. | General or ongoing condition. |
| 3. | Pursuant to the Mutual Compromise Settlement and Release Agreement, the applicant reserves the right to file an application seeking further subdivision of Parcel B. The City retains all of the rights and authority granted to or vested in a public agency by law with respect to the review, approval, approval with conditions or disapproval of the subdivision application. | General or ongoing condition. |
| 4. | The applicant is responsible for all costs associated with implementing the Mitigation Monitoring and Reporting Program. | General or ongoing condition. |
| 5. | All on-site utility distribution services shall be installed underground. Conduit for cable television shall also be installed underground. All undergrounding shall occur at no expense to the City. | General or ongoing condition. |
| 6. | Any cost of relocating utilities due to subdivision improvements shall be the responsibility of the applicant. | General or ongoing condition. |
| 7. | The construction area shall be reduced to as small an area as possible while allowing for efficient construction of the proposed project. | General or ongoing condition. |
| 8. | Designs for roadways and homesites shall minimize impervious surfaces and utilize stormwater best management practices to the maximum extent practicable. Sources for residential site planning and design guidance for storm water quality protection include Start at the Source by Bay Area Stormwater Management Agencies Association, the California Stormwater Best Management Practice handbooks, and City of Lafayette"Stormwater Quality Control Guidelines." | General or ongoing condition. |
| 9. | All stormwater management facilities, including but not limited to, treatment BMPs, permanent source control BMPs, detention basins, and drop structures, shall be installed and shall be inspected and certified by the project design engineer. | General or ongoing condition. |
| 10. | Mitigation Measure 15: Prior to issuance of a building permit for home construction, the applicant shall pay the required Drainage Study Fee pursuant to Chapter 8-17, Lafayette Municipal Code.<br>Development of this subdivision and any new residence and applicable accessory structures constructed in the subdivision shall be subject to Walkway | Satisfied: ____<br>Date: _____<br>Staff: _____ |

| | | |
|---|---|---|
| | Fees and Chapter 6-16 (Parkland Dedication Fees). | |
| 11. | Mitigation Measure 28: To ensure that potential construction impacts are less than significant, the following mitigation measures shall be implemented:<br>a. Water all active construction areas at least twice daily.<br>b. Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least two feet of freeboard.<br>c. Pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites.<br>d. Sweep daily (with water sweepers) all paved access roads, parking areas and staging areas at construction sites.<br>e. Sweep streets daily (with water sweepers) if visible soil material is carried onto adjacent public streets.<br>Additionally, in the event that the disturbance of greater than four acres is required, the following mitigation measures shall also be implemented:<br>a. Hydroseed or apply (non-toxic) soil stabilizers to inactive construction areas (previously graded areas inactive for ten days or more).<br>b. Enclose, cover, water twice daily or apply (non-toxic) soil binders to exposed stockpiles (dirt, sand, etc.)<br>c. Limit traffic speeds on unpaved roads to 15 mph.<br>d. Install sandbags or other erosion control measures to prevent silt runoff to public roadways.<br>e. Replant vegetation in disturbed areas as quickly as possible. | General or ongoing condition. |
| 12. | Prior to issuance of grading and/or building permits, the applicable conditions of approval set forth in this Exhibit shall be duplicated in the construction drawing plan sets for the benefit of the contractor(s) and inspector(s). All sheets in the construction drawings shall be the same size (e.g. 24" x 36"). | General or ongoing condition. |
| 13. | Prior to start of grading or construction, whichever occurs first, a sign stating the allowed days and hours for construction shall be posted in a conspicuous place on the property where it can be viewed by all contractors, subcontractors, and the general public. The sign shall be no smaller than 2 square feet or larger than 4 square feet with lettering between 3 inches and 5 inches in height. The construction sign shall state, "Hours of construction, Monday - Saturday, 8:00 A.M. to 6:00 P.M. No construction shall occur on Sundays or federal holidays." Violation of this condition may result in issuance of a Stop Work Order or administrative citations. | General or ongoing condition. |

| | | |
|---|---|---|
| 14. | The applicant shall obtain an encroachment permit from the City of Orinda for any improvements within the right-of-way of Happy Valley Road. | General or ongoing condition. |
| 15. | Equipment and material staging and storage areas, equipment maintenance, portable toilets, fueling operations, and similar activities shall be located on the subject property within disturbed areas and away from sensitive areas such as drainage swales, creeks, trees, tree groves, and existing residences. Temporary storage of construction boxes or construction materials must be kept out of any private easement or public right-of-way to permit emergency vehicle access during the construction project. Violation of this condition may result in issuance of a Stop Work Order or administrative citations. | General or ongoing condition. |
| 16. | Temporary trailers are to be used only during the construction period and shall be removed within ten (10) days of final inspection approval. | General or ongoing condition. |
| 17. | The applicant shall be responsible for ensuring that tree protection measures remain intact throughout the construction process. Staff will conduct site inspections throughout the construction process without prior notice. If the protection measures are damaged or otherwise removed, the project shall be subject to a stop work order until such time as corrective measures have been taken to the satisfaction of Planning Services Division staff. | General or ongoing condition. |
| 18. | The applicant shall be responsible for the prompt clean up of any materials spilled or dropped on any abutting streets during construction. The City Engineer may require the owner to post a cash deposit prior to the start of construction to cause timely clean up of streets. | General or ongoing condition. |
| 19. | If the Planning Services Division, either independently or as a result of complaints from the public, becomes aware that these conditions of approval are being violated, the Planning Services Division may pursue administrative remedies pursuant to Chapter 1-9 of the Lafayette Municipal Code. | General or ongoing condition. |
| 20. | The applicant shall defend, indemnify and hold harmless the City of Lafayette, (its agents, officers and employees) from an action, or proceeding against the City that attacks or seeks to, set aside this approval, if the action or proceeding is brought within the applicable time period of Government Code Section 65009. If the City is aware of such action or proceeding it shall promptly notify the applicant and cooperate fully in the defense. If the City fails to promptly notify the applicant, or fails to cooperate fully in the defense, the applicant is not thereafter responsible to defend, indemnify or hold the City harmless. This condition does not prohibit the City from participating in the defense of the action, or proceeding, if both of the following occur: (1) the City bears its own attorney's fees and costs; and (2) the City defends the action in good faith. In this condition "applicant" means each person who qualifies as an applicant as that term is defined in L.M.C. sections 6-203.[1] | General or ongoing condition. |

[1] An applicant is a person who has either (a) a freehold interest in the subject land, (b) a possessory interest in that land that entitles him to exclusive possession, or (c) a contractual interest which is specifically enforceable and thereby may become a freehold or exclusive possessory interest. Applicant also includes an authorized agent.

| | | |
|---|---|---|
| 21. | The conditions herein contained shall run with the property and shall be binding on the property owner(s), and all heirs, executors, administrators, and successors in interest to the real property that is the subject of this approval. | General or ongoing condition. |
| | **PRIOR TO FINAL MAP APPROVAL** | **FOR STAFF USE ONLY** |
| 22. | The parcel map shall be revised to show the 10-foot strip of land adjoining and lying southerly of Happy Valley Road as dedicated to the City of Lafayette as shown on the map filed September 25, 1975 in Book 40 of Parcel Maps of Official Records, at Page 21. | Satisfied: ____<br>Date: _____<br>Staff: _____ |
| 23. | The existing scenic easement document shall be revised, or replaced as applicable, to reflect the expanded easement. | Satisfied: ____<br>Date: _____<br>Staff: _____ |
| 24. | Mitigation Measure 7. Prior to final map approval, the applicant shall submit detailed improvement and civil plans per the City Engineer's requirements. Said plan shall be prepared by a registered civil engineer. All public improvements shall be designed to City of Lafayette standards and to accepted engineering design standards. The City Engineer has all such standards on file and the Engineer's decision shall be final regarding the specific standards that shall apply. Where appropriate, as determined by the City Engineer, improvements and environmental mitigation measures required by the conditions of approval and all other applicable conditions of approval shall be incorporated into improvement plans. | Satisfied: ____<br>Date: _____<br>Staff: _____ |
| 25. | Mitigation Measure 10: Prior to Improvement Plan approval or issuance of a grading permit, whichever occurs first, the applicant shall prepare and submit a detailed erosion control plan (ECP) to the city Engineering Services Manager for review and approval. The purpose of the ECP shall be to mitigate erosion and sedimentation impacts during construction. At a minimum, the ECP shall include the following:<br>a. A proposed schedule of grading activities, monitoring, and infrastructure milestones in chronological format;<br>b. Identification of critical areas of high erodibility potential and/or unstable slopes;<br>c. Contour and spot elevations indicating runoff patterns before and after grading;<br>d. Identification of erosion control measures on slopes, lots and streets. Measures shall be based on recommendations contained in the "Erosion and Sediment Control Field Manual" published by the San Francisco Regional Water Quality Control Board (RWQCB);<br>e. Utilization of soil stabilization techniques such as short-term biodegradable erosion control blankets and hydroseeding;<br>f. Retention of a landscape architect experienced in erosion control stabilization measures to work with the design civil engineer in establishing the proper erosion control measures in graded areas; and | Satisfied: ____<br>Date: _____<br>Staff: _____ |

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| | g. Post-construction inspection of all drainage facilities for accumulated sediment, and the cleaning of these drainage structures of debris and sediment.<br><br>The ECP shall be described in the Storm Water Pollution Prevention Plan (SWPPP) prepared for the project. | |
| 26. | Mitigation Measure 11. To minimize impacts to neighboring properties and existing vegetation, the stockpile area shall be at least 25 feet from the nearest residence and be limited to the grassland area. Prior to final map approval or issuance of a grading permit, a plan showing a stockpile location meeting these criteria shall be submitted to the Planning Services Division for review and approval. No equipment, construction materials or dirt shall be placed within the dripline of any trees or within northern coastal scrub habitat. | Satisfied: ____<br>Date: _____<br>Staff: _____ |
| 27. | Concurrent with submittal of grading and/or improvement plans, the applicant shall submit a draft City of Lafayette Stormwater Management Facilities Operations and Maintenance Agreement and Right of Entry to the Engineering Services Division for review and approval. A sample Agreement is available from the Planning Services Division or from www.lovelafayette.org > City Departments > Public Works > Appendix A – Stormwater Facilities Operations and Maintenance Agreement. | Satisfied: ____<br>Date: _____<br>Staff: _____ |
| 28. | Prior to Final Map approval, the applicant shall provide proof to the City that condition of approval #4 as shown on the conditions of approval for Subdivision 6462 dedicating development rights over Parcel A of Subdivision 6462 to Contra Costa County in the form of a scenic easement has been rescinded or otherwise modified allowing development of Parcel A for access to the subject property. | Satisfied: ____<br>Date: _____<br>Staff: _____ |
| 29. | Mitigation Measure 2: Subject to approval by the City of Orinda, recommended signing and pavement markings specified in Mitigation Measure 3 shall be included in subdivision improvement plans. | Satisfied: ____<br>Date: _____<br>Staff: _____ |
| 30. | Mitigation Measure 3: Roadway improvement plans shall include mitigation of potential hazards at this intersection. Specific recommendations, subject to review and approval by the City of Orinda, include:<br><br>a. Installation of an advanced curve warning sign and supplemental 20 mph sign facing southbound drivers approaching the curve;<br>b. Installation of a series of chevron arrow warning signs around the curve facing downhill drivers;<br>c. Addition of reflectors to the guard rail;<br>d. Restriping of Happy Valley Road from Sundown Terrace to the Lafayette city limits in addition to what is included in City of Orinda Encroachment Permit No. 06-130.<br><br>Recommended signing and pavement markings specified above, or other measures imposed by the City of Orinda that in the City of Lafayette's judgment provide the same level of safety precautions, shall be included in subdivision improvement plans. | Satisfied: ____<br>Date: _____<br>Staff: _____ |

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| 31. | In order to reduce grading and minimize impacts on aesthetics and water quality, the interior access road shall be paved at the minimum width required by the Contra Costa Fire Protection District. | Satisfied: ____<br>Date: _____<br>Staff: _____ |
| 32. | Prior to Final Map approval or issuance of grading permits, whichever occurs first, the applicant shall incorporate the following design specifications into project plans unless otherwise specified by the Fire District:<br>a. Provide access roadways with all-weather driving surfaces of not less than 20 feet unobstructed width, and not jess than 13 feet 6 inches of vertical clearance, to within 150 feet of travel distance to all portions of the exterior walls of every building. Access roads shall not exceed 16% grade, shall have a minimum outside turning radius of 45 feet, and must be capable of supporting the imposed loads of fire apparatus, i.e., 37 tons. (902.2) CFC<br>b. The project as proposed shall require the installation of an approved Fire District turnaround. Dead-end emergency apparatus access roadways, driveways, and cul-de-sacs in excess of 150 feet in length shall be provided with approved provisions for the turning around of fire apparatus. (902.2.2.4, UFC) District turnarounds shall not exceed 8% grade, shall have a minimum outside turning radius of 45 feet, an inside turning radius of 25 feet, and must be capable of supporting the imposed loads of fire apparatus, i.e., 37 tons. Fire District turnarounds shall not be obstructed in any manner without Fire District approval. (902.2.2.4) CFC<br>c. Provision of an adequate and reliable water supply for fire protection as set forth in the California Fire Code. (903.1) CFC<br>d. Provision of two hydrants of the East Bay type. Hydrant locations shall be determined by the Fire District. (903.4.4) CFC<br>e. Access gates for Fire District apparatus shall be a minimum of 20-fet wide. Electrically operated gates shall be equipped with a Knox Company key-operated switch. Access gates shall swing inward and be setback from public right-of-way by a minimum of 30 feet. Manually operated gates shall be equipped with a non-casehardened lock or approved Fire District lock. Contact the Fire District for information on ordering the key-operated switch. (902.2.4) CFC | Satisfied: ____<br>Date: _____<br>Staff: _____ |
| 33. | The applicant shall submit three copies of site improvement plans indicating turnaround and fire apparatus access roadways for review and approval prior to construction. Indicate any water mains to be installed in any of the newly aligned roadways. (902.2.2.1) CFC | Satisfied: ____<br>Date: _____<br>Staff: _____ |
| 34. | Revise the 10-foot trail easement to provide minimum 20-foot trail easement in a location acceptable to the City. The trail easement shall be dedicated to the City of Lafayette for public use prior to or concurrent with the recording of the Final Map. Show trail dedication on certificate sheet of the Final Map. | Satisfied: ____<br>Date: _____<br>Staff: _____ |

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| | If the trail is within the access road easement, signs shall be placed on the road stating that the road is a public trail. The applicant shall install trail signage as may be approved by the Parks, Trails, and Recreation Commission. | |
| 35. | The trail easement shall be provided with permanent survey monuments set by a licensed surveyor or civil engineer prior to filing the final map/parcel map. Monuments shall be supplemented by above ground markers such as redwood posts. The location and type of markers and monuments shall be approved by the City Engineer and Parks, Trails, and Recreation Commission and shall be placed at sufficient intervals to delineate clearly the location of the easement in the field. | Satisfied: ____<br>Date: _____<br>Staff: _____ |
| 36. | Mitigation Measure 16: The applicant's drainage plan shall include the use of temporary facilities to divert or control runoff during construction to avoid the possibility of uncontrolled erosion during or following construction. Other long-term and permanent erosion control methods include landscaping and the selective use of drainage swales and subdrains. All such erosion control measures shall be described in the Storm Water Pollution Prevention Plan prepared for the project. Hydroseeding for remedial earthwork and erosion control shall use a native grassland mix appropriate for this hillside location. | Satisfied: ____<br>Date: _____<br>Staff: _____ |
| 37. | Hydroseeding for erosion control shall utilize the following performance standards:<br>a. Hydroseeding on the regraded slopes shall include only native species;<br>b. Hydroseeding shall take place in a time period that will ensure germination, or as directed by the Engineering Services Manager; and<br>c. As dictated by weather and field conditions at the time of hydroseeding, the Engineering Services Manager may require the installation of erosion control blankets or matting to secure the hydroseed. | Satisfied: ____<br>Date: _____<br>Staff: _____ |
| 38. | Mitigation Measure 12: The City shall review and approve the project drainage plan to determine its adequacy to accommodate the 10-year event. The stormwater control plan shall meet the requirements of the City's stormwater pollution prevention plan and the Contra Costa County Clean Water Program. Prior to approval of an improvement plan or issuance of a grading permit, whichever occurs first, the applicant shall submit to the City Engineering Services Manager a final hydrology and hydraulic analysis of the existing storm drain system to its discharge to Happy Valley Creek. The final hydrology and hydraulic analysis shall demonstrate, to the satisfaction of the City Engineering Services Manager, that the project meets the following performance criteria including but not limited to:<br>a. Post-project peak run-off has been detained/retained onsite, and<br>b. That detention systems have been constructed to handle adequately the 10-year storm runoff from buildout of the site. If the systems are determined to be inadequately sized, the systems shall be expanded to provide for adequate detention and to maintain peak discharge at or below the discharge/runoff conditions documented in the FEIR. | Satisfied: ____<br>Date: _____<br>Staff: _____ |
| 39. | Prior to approval of an improvement plan or issuance of a grading permit, whichever occurs first, the applicant shall submit to the City Engineer a final | |

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| | hydrology and hydraulic report analyzing the project drainage from Parcel B to its discharge to the creek north of Parcel B (unnamed tributary to Lauterwasser Creek). Any impacts or deficiencies shall be mitigated as part of the subdivision improvements, including but not limited to the detention basin proposed to mitigate the existing drainage condition and capture runoff from the proposed development. The final hydrology and hydraulic analysis shall demonstrate, to the satisfaction of the City Engineering Services Manager that the project meets the following performance criteria including but not limited to:<br>a. Post-project run-off shall be maintained at or below the discharge/runoff conditions documented in the Final EIR,<br>b. Post-project peak run-off has been detained/retained onsite,<br>c. That detention systems have been constructed to handle adequately the 10-year storm runoff from buildout of the site. If the systems are determined to be inadequately sized, the systems shall be expanded to provide for adequate detention and to maintain peak discharge at, below or equal to existing discharge/runoff conditions,<br>d. Re-vegetation of drainage channel on Parcel B,<br>e. Prior to review by the Engineering Services Manager, drainage plans shall be reviewed by the project geotechnical engineer.<br>The drainage plan shall indicate the location and design of all storm drainage facilities, including subsurface drains, detention basins, drop structures, and maintenance access road to detention basins. Detention basins shall be constructed in conjunction with grading for the development. Private drainage easements shall be shown on the map as needed. Encumbrances shall be shown on the drainage map including but not limited to maintenance access roads to detention basins. The re-vegetation plan shall incorporate riparian species to the maximum extent practicable. | Satisfied: ____<br>Date: _____<br>Staff: _____ |
| 40. | Mitigation Measure 22: On-site drainage plans shall be reviewed by the California Department of Fish and Game to determine if a Stream Alteration Agreement is required. | Satisfied: ____<br>Date: _____<br>Staff: _____ |
| 41. | Mitigation Measure 13: The drainage plan for Parcel C shall direct runoff to Happy Valley Creek and away from existing residences to the northeast. | Satisfied: ____<br>Date: _____<br>Staff: _____ |
| 42. | Mitigation Measure 14: Maximum use of on-site stormwater detention should be incorporated into the project where possible through appropriate design of drainage facilities. | Satisfied: ____<br>Date: _____<br>Staff: _____ |
| 43. | Mitigation Measure 5. The two active landslides on the site shall be repaired. These slides can be repaired by conventional removal and recompaction operations. All landslide repairs and remedial grading shall implement the recommendations of the geotechnical engineer, Purcell, Rhoades & Associates, as contained in the Geotechnical Study Update, June 1, 2006 and Supplemental | Satisfied: ____<br>Date: _____<br>Staff: _____ |

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| | Investigation Report, July 26, 2007, or as amended by the City Engineering Services Manager.<br><br>Additional field investigation and analysis shall be conducted to determine the final limit of remedial earthwork and to analyze alternative repair scenarios. A possible scenario is to focus on providing a fill buttress for the access road and leave the thick colluvial deposit at the eastern limits of the site (Boring B-2) in place.<br><br>The additional field investigations shall provide site specific recommendations for the buttress and shall include a design level plan with cross-sections to coordinate drain bench and subdrain elevations and flow directions. The scope and location of subsurface testing and related investigations shall be coordinated with the City Engineering Services Manager. The Engineering Services Manager shall have final discretion in determining the scope and nature of any and all remedial work required. Where appropriate, as determined by the City Engineer, improvements and environmental mitigation measures required by the conditions of approval and all other applicable conditions of approval shall be incorporated into improvement plans.<br><br>Prior to submittal of grading and improvement plans to the City Engineering Services Manager for review and approval, the plans shall be reviewed by the project geotechnical engineer to ensure that the recommendations and specifications have been included.<br><br>During landslide and soil stabilization work, the project geotechnical engineer or engineering geologist, or their representative, must be present to observe the work performed and to perform whatever testing is necessary to properly evaluate the quality of the work and to ensure compliance with approved plans. | |
| 44. | Mitigation Measure 26: To reduce the visual impacts of conventional grading and retaining walls, subdivision improvement plans shall include use of topographic berms, boulders, and natural landscape amenities. | Satisfied: ____<br>Date: _____<br>Staff: _____ |
| 45. | Mitigation Measure 27: Prior to approval of the final map or issuance of a grading permit, whichever occurs first, the applicant shall submit a re-vegetation plan for the areas subject to remedial earthwork and for the stockpile area. The re-vegetation plan shall include native plant species to replace and enhance the amount and type of vegetation removed or impacted. | Satisfied: ____<br>Date: _____<br>Staff: _____ |
| 46. | This subdivision shall be subject to recorded Covenants, Conditions and Restrictions (CC&Rs) or other agreement satisfactory to the City Attorney. The CC&Rs shall provide for the maintenance of private roads, private drainage and stormwater control systems, and of any feature, landscaping, or other improvement to be commonly maintained and shall include a restriction prohibiting vehicular access across this property for the purpose of giving other adjacent properties access to Happy Valley Road.<br><br>The CC&Rs shall acknowledge the existence of the trail easement and contain provisions stating that the described easement shall remain accessible to the public and homeowners may not place any type of signage or barrier that would | Satisfied: ____<br>Date: _____<br>Staff: _____ |

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| | discourage public use of the trail. The trail easement is not be encroached upon by fences, vegetation, earth mounds, drainage ditches, sheds, animal houses or structures of any kind. There shall be no dumping of rubbish, building materials, or garden clippings on the trail easement. | |
| 47. | This subdivision shall conform to the provisions of the County Subdivision Ordinance (Title 9) as adopted by the City of Lafayette. | Satisfied: ____<br>Date: _____<br>Staff: _____ |
| 48. | All applicable requirements of any law or agency of the State, City of Lafayette and any other governmental entity at the time of the recording of the final map shall be met. The duty of inquiry as to such requirements shall be upon the applicant. | General or ongoing condition. |
| 49. | The final/parcel map shall be recorded before sale of any approved lot. | Satisfied: ____<br>Date: _____<br>Staff: _____ |
| 50. | Sanitary sewers shall be gravity flow unless it is determined by the Central Contra Costa Sanitary District that gravity flow is infeasible, in which case pumping may be allowed. No septic or leachfield systems shall be allowed. | Satisfied: ____<br>Date: _____<br>Staff: _____ |
| 51. | The placement of mailboxes within the right-of-way shall conform to current standards of the U.S. Postal Service and the City of Lafayette Engineering Services Division. The subdivider is advised to contact the postal service and find satisfactory arrangements for mail delivery. | Satisfied: ____<br>Date: _____<br>Staff: _____ |
| 52. | The applicant shall execute a subdivision agreement with the City prior to recording the Final Map agreeing to install all required improvements within one year of the map being recorded. The agreement shall be secured by a bond or other security acceptable to the City. | Satisfied: ____<br>Date: _____<br>Staff: _____ |
| 53. | Prior to filing the Final Map, applicant shall provide City with proof that an agreement has been executed with each utility company and that all appropriate fees and/or bonds have been paid as required by the agreement. | Satisfied: ____<br>Date: _____<br>Staff: _____ |
| 54. | All streets in the subdivision shall be private. A roadway and drainage maintenance agreement shall be recorded against each lot in the subdivision, obligating each lot for a proportionate share of the maintenance of the street and any joint private facilities, including drainage, with consent of a majority of the property owners. | Satisfied: ____<br>Date: _____<br>Staff: _____ |
| 55. | Prior to filing the Parcel/Final Map, applicant shall provide City with (a) a reproducible mylar copy, (b) a scanned electronic file in TIFF format, and (c) an electronic file in AutoCAD or Microstation compatible format, of the approved improvement plans. Within 60 days after recording the Final Map, the applicant shall provide the City with (a) a reproducible mylar copy and (b) a scanned electronic file in TIFF format, of the recorded Final Map. Prior to release of security for the subdivision improvements, provide (a) and (b) of the as-built improvement plans. | Satisfied: ____<br>Date: _____<br>Staff: _____ |

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| 56. | Prior to filing the Parcel/Final Map, the applicant shall submit the final City of Lafayette Stormwater Management Facilities Operations and Maintenance Agreement and Right of Entry to the Engineering Services Division for review and approval. | Satisfied: ____<br>Date: _____<br>Staff: _____ |
| | **PRIOR TO ISSUANCE OF A GRADING PERMIT** | **FOR STAFF USE ONLY** |
| 57. | Mitigation Measure 4: Prior to issuance of a grading or building permit, whichever occurs first, submit a construction traffic control plan to the Engineering Services Manager for review and approval. The traffic control plan may include limitations on days and hours beyond those normally allowed for construction. The approved construction traffic control plan shall be implemented during all phases of active construction and may be modified by the Engineering Services Manager as required to ensure that impacts on area traffic and circulation are minimized to the maximum extent feasible. | Satisfied: ____<br>Date: _____<br>Staff: _____ |
| 58. | Mitigation Measure 20: Disturbance of grassland habitat during access road construction shall be confined to the area east of the proposed road to minimize any damage to more valuable habitats to the west. | Satisfied: ____<br>Date: _____<br>Staff: _____ |
| 59. | Mitigation Measure 23: A preconstruction survey for the California red-legged frog and the Alameda whipsnake shall be conducted of the areas of the project site that would be affected prior to construction. Upon completion of the preconstruction survey, survey results shall be reported to the Planning Services Division. If evidence of these or other special status species is found, the California Department of Fish and Game shall be consulted. | Satisfied: ____<br>Date: _____<br>Staff: _____ |
| 60. | Mitigation Measure 24: A preconstruction survey shall be conducted for nesting raptors within 250 feet of any construction area within 21 days of construction. A buffer of a radius of at least 250 feet shall be established between any nesting raptor and construction activity. The project sponsor shall submit plans to the Planning Services Division showing the buffer area and protection measures such as fencing or other measure(s) approved by the City. This buffer shall be maintained until the chicks fledge, unless a biologist experienced with raptor nesting behavior determines that the buffer can be reduced without stressing the nesting raptor. | Satisfied: ____<br>Date: _____<br>Staff: _____ |
| 61. | Prior to approval of any grading permit or in conjunction with an application for Design Review approval, whichever occurs first, the applicant shall submit a tree permit application pursuant to Chapter 6-17 of the Lafayette Municipal Code. Compliance with this chapter will result in the replacement or mitigation of any protected tree affected by the project. | Satisfied: ____<br>Date: _____<br>Staff: _____ |
| 62. | The applicant shall install protective measures for all trees to remain. Protective measures shall be shown on the grading and/or drainage plan and shall be reviewed by a certified arborist. All tree protection measures shall be approved, installed and inspected by the City before any construction may begin. The City may elect to have the installed tree protection measures inspected by a consulting certified arborist to be paid for by the applicant. All | Satisfied: ____<br>Date: _____<br>Staff: _____ |

existing trees to remain shall be protected with the following measures during construction:

a. Protective fencing shall be installed prior to any construction activity, including clearing and grubbing, at the project site. Fencing shall be a minimum of one foot beyond the maximum dripline of all trees and may extend well beyond the dripline under certain site conditions.

b. Fencing shall be six feet high and shall form a continuous barrier around protected trees. The length, spacing, depth and material of the posts securing the fencing shall be designed to remain solidly in place until the final City inspection is made. Two protection fence detail options are provided in the City's Construction Policies and Guidelines for Tree Preservation and Protection to provide direction for this fencing. The City may require modifications to these details depending on the particular site conditions.

c. Other protection measures may be necessary including using hay bales at the base of the trunk for trunk protection of critical trees, if necessary. In addition, 2 x 4s or other approved material may be necessary to protect overhanging limbs that are proposed to be retained.

d. The site supervisor shall direct all contractors and subcontractors to remain outside of the fenced area of the dripline and shall not allow any type of construction activity, including parking or storage within the fenced area. The fencing must remain in place for the duration of the project.

e. All underground work within tree driplines shall be avoided wherever possible to minimize impacts. Locating utilities and necessary trenching outside of the canopy driplines is the best solution; trenching and grading within the dripline has the potential to seriously compromise the health and structural integrity of the trees. If trenching or grading within the dripline is completely unavoidable because of site constraints, then the project arborist or landscape architect shall be consulted on-site to advise on the least damaging course of action. The trenching shall also be reviewed with the City inspector prior to excavation.

f. Trenches within the dripline shall be hand dug. Cuts to tree roots shall be minimized to the extent feasible and shall be treated as exposed. Roots of trees shall never be pulled because of excessive damage. The project arborist or landscape architect shall be on-site to direct treatment of any damaged roots as they are exposed. Treatment shall include cutting the roots cleanly with sharp tools; no wound dressing products shall be used. The roots shall be trimmed, cleaned, and covered with wet burlap and/or shredded mulch. The project arborist or landscape architect shall assess a tree for structural impacts if roots over two inches in diameter are encountered.

g. Cutting and filling within the dripline of trees shall be avoided. Any fill mistakenly placed against the trunk of a tree shall be removed to restore the natural flair of the trunk. Appropriate retaining walls shall be constructed along and outside of the dripline area if grade changes approach the drip line and a 2:1 return slope cannot be constructed.

h. Access within the dripline shall be granted only as a condition of the tree removal application. If pruning is required for safe access and clearance within the dripline, then necessary pruning shall be to the standards and guidelines of the International Society of Arboriculture. The safety of the construction equipment operators is paramount; however, excessive or improper pruning can seriously impact the health and vigor of the tree. Pruning shall be as minimal as possible, so equipment heights shall be measured and trees pruned accordingly under the direction of a certified arborist. Pruning shall be done prior to construction activities and shall not be done by construction personnel. Pruning more than 30 percent of a tree at one time is considered a significant impact. The project arborist shall identify and monitor all pruning activities during construction.

i. Individual or isolated trees subject to the influences of trenching, grade changes, or altered drainage patterns shall be provided with a protective layer of mulch prior to construction activities. Mulch shall be chipped bark material placed in a layer that is 4 to 6 inches deep. Mulch shall be placed away from the trunk and extend out to the dripline of the canopy or the edge of the protective fencing. Any weeds growing beneath the canopy may be removed by hand before mulch is placed. Weeds shall not be sprayed with herbicide within the tree canopy zone. The area beneath the dripline shall be well-watered prior to the placement of the mulch so that moisture is not wicked out of the soil by the mulch itself.

j. If necessary, specific instructions for fertilization, disease, pest control, and weed control shall be made for individual trees. In general, chemical controls shall be avoided on the project site so that problems are not exacerbated and overall impacts to the natural balance are minimized.

k. Watering during construction to minimize tree stress is crucial when ¼ or more of a tree's roots have been disturbed. Water shall be slowly applied to a minimum depth of 12 inches for the full outer half of the canopy/dripline area. The area immediately adjacent to a tree trunk shall not be watered. Watering shall occur once a month during the dry season (May through September). Trees near asphalt shall be supplied with additional water because asphalt paving absorbs heat which in turn raises nearby soil temperature and increases moisture loss.

l. All grading shall be designed to drain water away from the base of the trees to avoid creating areas of ponding within the dripline. The natural drainage across the site shall be retained as much as possible.

m. If it is necessary to pave beneath the dripline the maximum allowable cut or fill shall be six inches for paving within the dripline. In addition, paving modifications including gap graded gravel, pier and grade beam footings, steel reinforcement, or aeration breaks in the paving may be required.

n. If equipment access is absolutely necessary beneath the dripline of a tree, a mulch layer (4-12 inches, depending upon the weight of the equipment) of tree chips or cocoa hulls shall be placed over the area that would be affected prior to allowing the equipment to cross. Work shall be scheduled so that the equipment is only required to cross the root zone once to enter

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| | and once to exit. The mulch shall be left on the site since removal may cause damage to surface feeder roots.<br>o. Under each circumstance where an arborist is required to supervise or observe construction, the arborist may require additional mitigation measures or halt construction if necessary to protect the subject trees.<br>p. Trees which are excessively damaged due to inadequate protection or negligence by the contractor shall be replaced at the applicant's expense. Replacement shall be determined in the same manner as mitigation plantings. | |
| 63. | Mitigation Measure 17: Prior to issuance of grading or building permits, whichever occurs first, the applicant shall comply with NPDES General Construction Activities Storm Water Permit Requirements established by the CWA including preparation of a SWPPP. The SWPPP shall identify specific types and sources of storm water pollutants, determine the location and nature of potential impacts, and specify appropriate control measures to eliminate any potentially significant impacts to receiving water quality from storm water runoff. In addition to complying with the standards established by the CWA for preparation of a SWPPP, the SWPPP shall also comply with the directions for preparing a SWPPP contained in the latest edition of the Guidelines for Construction Projects published by the California Regional Water Quality Board San Francisco Region. | Satisfied: ____<br>Date: _____<br>Staff: _____ |
| 64. | Mitigation Measure 18. Prior to issuance of grading or building permits, whichever occurs first, the project sponsor shall submit to the City Engineering Services Manager a copy of the Notice of Intent (NOI) and SWPPP sent to the State Water Resources Control Board. | Satisfied: ____<br>Date: _____<br>Staff: _____ |
| 65. | Plans submitted for grading and building permits shall include the following noise standards copied onto the plans:<br>a. Site improvement and construction work, including setup, loading or unloading of materials and equipment, and/or the maintenance, refueling or tune-up of any equipment shall be restricted to the hours of 8:00 a.m. to 6:00 p.m., Monday through Saturday. No construction shall occur on Sundays or federal holidays.<br>b. All construction equipment powered by internal combustion engines shall be properly maintained and muffled to reduce noise levels to the maximum extent feasible.<br>c. Unnecessary idling of internal combustion engines near existing noise sensitive receptors shall be prohibited.<br>d. Stationary equipment shall be located as far away from residences as feasible, but in no case shall be closer than 40 feet to any property line or exceed 70 dBA at 50 feet. Non-stationary mobile equipment shall not exceed 83 dBA at 50 feet.<br>e. Construction equipment staging shall be at least 200 feet from the nearest residence. | Satisfied: ____<br>Date: _____<br>Staff: _____ |
| 66. | Prior to the start of grading or construction, whichever occurs first, a sign stating the allowed days and hours for construction shall be posted in a | Satisfied: ____<br>Date: _____ |

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| | conspicuous location on the project site where it can be viewed by all contractors. The sign shall be no smaller than two square feet nor larger than four square feet with lettering between three inches and five inches in height. | Staff: _____ |
| 67. | Applicant shall obtain all grading permits required by applicable law and regulations for earthwork necessary to develop the roadways, dwellings, and driveways on each lot. | General or ongoing condition. |
| 68. | Grading operations shall be scheduled only between April 15 and October 1 to avoid the Fall and Winter rains. At the applicant's risk, grading may begin as early as March 15 and continue past October 1, only if approved stormwater pollution prevention measures have been installed and certified as operational by the Project Engineer and the Contra Costa County Grading Inspector. | General or ongoing condition. |
| | **PRIOR TO ISSUANCE OF BUILDING PERMITS** | **FOR STAFF USE ONLY** |
| 69. | Mitigation Measure 7: Prior to submittal of design review and hillside development permit applications for the individual homesites, design-level subsurface testing and investigations shall be conducted to determine design parameters for house foundations and improvements. | Satisfied: ____<br>Date: _____<br>Staff: _____ |
| 70. | Mitigation Measure 25: Plans for development of individual lots on the site shall be reviewed pursuant to the City's Design Review process to ensure that visual impacts are minimized. Possible measures to reduce visual impacts would include height and bulk restrictions and use of earth-tone colors in the design of the new houses, and screening through use of drought-tolerant and/or native landscaping. The applicant would be required to execute the City's standard landscape maintenance agreement prior to issuance of a permit for building construction to ensure that existing and new vegetation and landscaping is maintained. | Satisfied: ____<br>Date: _____<br>Staff: _____ |
| 71. | Mitigation Measure 1. The City of Lafayette shall verify compliance with the Creek Setback Ordinance through review of plot plans for individual parcels on the project site as part of the City's Design Review and Hillside Development Permit process. | Satisfied: ____<br>Date: _____<br>Staff: _____ |
| 72. | Mitigation Measure 19: Any future development on Parcel B shall be planned so as to avoid the more valuable wildlife habitats (oak woodland, coastal scrub, and riparian) to the west and southwest. | Satisfied: ____<br>Date: _____<br>Staff: _____ |
| 73. | Mitigation Measure 21: Construction and landscaping on Parcel C shall be carried out with minimum disturbance to oak woodland habitat. Placement of the driveway and house site shall avoid removal of oak woodland, and any lost habitat shall be replaced on an acre-per-acre basis on the parcel and in conformance with Chapter 6-17, Tree Protection, Lafayette Municipal Code. Landscape materials shall consist of only native, drought-tolerant species. | Satisfied: ____<br>Date: _____<br>Staff: _____ |
| 74. | Plans for development of Parcel B shall include the planting of native vegetation for privacy screening between Parcel B and the abutting properties to the north on Sundown Terrace. | Satisfied: ____<br>Date: _____<br>Staff: _____ |

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| 75. | Prior to approval of any grading permit or in conjunction with an application for Design Review approval, whichever occurs first, the applicant shall submit a tree permit application pursuant to Chapter 6-17 of the Lafayette Municipal Code. Compliance with this chapter will result in the replacement or mitigation of any protected tree affected by the project. *(duplicate)* | Satisfied: ____<br>Date: _____<br>Staff: _____ |
| 76. | Mitigation Measure 9: The expansive soils in the area will have future shrink and swell characteristics. All house foundations and super-structures should be carefully designed by an experienced structural engineer. Particular care should be given to connections, hold-downs, and reinforcement aspects of the house design. All house foundations should consist of drilled piers which are extended well into the bedrock underlying the surficial soils. The piers should be interconnected, designed to resist lateral creep forces, and contain voids below the grade beams. Retaining walls should also be designed for relatively high creep forces. The roadway designs should also take into consideration the uplift forces from the expansive soils. It is likely that a thick layer of non-expansive imported materials would be needed to help provide stability to the roadway section. Imported material would also likely be needed under any slab-on-grade improvements, walkways, or patios in the building areas. Proper surface drainage measures around the proposed homes would also help to minimize danger from expansive soils. Such measures would include collection of gutter downspouts to discharge pipes, collection of water on paved surfaces, and collection of water on the uphill side of the homes. Prior to issuance of a building permit, the applicant shall submit plans to the City Engineering Services Manager for review and approval. The plans shall demonstrate that the foundation design for the proposed structures, access road, and retaining walls have included the recommendations contained in the Geotechnical Study Update, June 1, 2006 or as amended by the City Engineering Services Manager. Prior to submittal to the City Engineering Services Manager for review and approval, the plans shall be reviewed by the project geotechnical engineer to ensure that the recommendations and specifications have been included. | Satisfied: ____<br>Date: _____<br>Staff: _____ |
| 77. | Prior to issuance of a building permit, the location of electrical and mechanical equipment (e.g., ventilation and air conditioning units) shall be shown on construction drawings. Such equipment shall be located as far away as feasible from sensitive-receptor areas. Additionally, the following shall be considered before installation: proper selection and sizing of equipment and installation of equipment with proper acoustical shielding. Furthermore, mechanical equipment shall comply with the noise standards of the City as specified in Table 3.9-2 (Outdoor Noise Limits). | Satisfied: ____<br>Date: _____<br>Staff: _____ |
| 78. | Prior to issuance of building permits, construction drawings shall incorporate the following design specifications: fire-retardant roof materials and automatic fire sprinkler systems. | Satisfied: ____<br>Date: _____<br>Staff: _____ |
| 79. | Prior to the issuance of a building permit, the applicant shall comply with the City's current Efficient Landscape Requirements and Water Conservation Ordinance. Conservation measures shall incorporate equipment, devices, and methodologies for plumbing fixtures and irrigation that further water | Satisfied: ____<br>Date: _____<br>Staff: _____ |

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| | conservation, such as high-efficiency toilets, or ultra-low-flow toilets, and automatic irrigation system controllers. | |
| 80. | Plans submitted for grading and building permits shall include the following noise standards copied onto the plans:<br>a. Site improvement and construction work, including setup, loading or unloading of materials and equipment, and/or the maintenance, refueling or tune-up of any equipment shall be restricted to the hours of 8:00 a.m. to 6:00 p.m., Monday through Saturday. No construction shall occur on Sundays or federal holidays.<br>b. All construction equipment powered by internal combustion engines shall be properly maintained and muffled to reduce noise levels to the maximum extent feasible.<br>c. Unnecessary idling of internal combustion engines near existing noise sensitive receptors shall be prohibited.<br>d. Stationary equipment shall be located as far away from residences as feasible, but in no case shall be closer than 40 feet to any property line or exceed 70 dBA at 50 feet. Non-stationary mobile equipment shall not exceed 83 dBA at 50 feet.<br>e. Construction equipment staging shall be at least 200 feet from the nearest residence. | Satisfied: ____<br>Date: _____<br>Staff: _____ |
| 81. | Prior to the issuance of a building permit for each new house, a City-approved landscape maintenance agreement for each lot shall be recorded assuring the long-term maintenance of the required landscape plan, as well as the existing trees. | Satisfied: ____<br>Date: _____<br>Staff: _____ |
| 82. | Prior to issuance of a grading or building permit, whichever occurs first, the applicant shall comply with all applicable codes, regulations, and ordinances administered by the Contra Costa County Fire Protection District in effect at the time the plans are reviewed and approved. | Satisfied: ____<br>Date: _____<br>Staff: _____ |
| 83. | The development of any parcel in this subdivision shall be subject to review and approval by the Fire District. Submit three sets of plans to the Fire District prior to obtaining a building permit. Plan review and inspection fees shall be submitted at the time of plan review submittal. | Satisfied: ____<br>Date: _____<br>Staff: _____ |
| 84. | Emergency apparatus access roadways and hydrants shall be installed, in service, and inspected by the Fire District prior to construction or combustible storage on site. (8704.1) CFC Written documentation that the Fire District is satisfied with the fire safety provisions on site shall be provided to the Planning Services Division prior to issuance of a building permit. | Satisfied: ____<br>Date: _____<br>Staff: _____ |
| 85. | The applicant shall submit construction plans involving work on the public sewer system to the Central Contra Costa Sanitary District for review and approval before the issuance of a building permit. Development shall conform to the conditions and recommendations of the District. | Satisfied: ____<br>Date: _____<br>Staff: _____ |

| PRIOR TO OCCUPANCY OF FIRST HOUSE | | FOR STAFF USE ONLY |
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| 86. | Prior to the sale of any lot or prior to final building inspection, whichever occurs first, the applicant shall execute any agreements identified in the Stormwater Control Plan that pertain to the transfer of ownership and/or long-term maintenance of stormwater treatment or hydrograph modification BMPs. Post construction stormwater pollution prevention guidelines, approved by the City, shall be given to new owners prior to the transfer of any property. | Satisfied: ____<br>Date: _____<br>Staff: _____ |
| 87. | All subdivision improvements shall be completed and accepted by the City. | Satisfied: ____<br>Date: _____<br>Staff: _____ |
| 88. | If remedial earthwork occurs in the dedicated trail easement, the ground within the easement shall be returned to a walkable state prior to occupancy of the first house. | Satisfied: ____<br>Date: _____<br>Staff: _____ |

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# City of Lafayette Staff Report

**For:** Planning Commission

**By:** Christine Sinnette, Senior Planner

**Date Written:** June 26, 2008

**Meeting Date:** July 3, 2008

**Subject:** **MS504-87CCII – ROBIN AND KRIS LEAMY (APPLICANTS & OWNERS), R-40 ZONING**: Request for a minor subdivision to divide 19.23 acres into three lots for residential development pursuant to Chapter 6-20 and Chapter 6-30 of the Lafayette Municipal Code (LMC), located at 4123 Happy Valley Road, APN 247-010-019 and 020. Planning Commission review of a supplement to an environmental impact report, the project and conditions of approval prior to final determination by the City Council at a subsequent noticed public hearing.

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## BACKGROUND

On June 19, 2008, the Planning Commission held a public hearing on this project including the review of a supplement to a final environmental impact report (SEIR) and draft conditions of approval. Public comments focused on the adequacy of the SEIR and geotechnical issues. The Commission asked some general questions about the project and made no changes to the SEIR and conditions of approval.

A question was raised by a member of the public about the adequacy of the public notice and agenda description for the June 19 meeting. Because there may be someone who did not understand that the Planning Commission would be considering the entirety of the project at the June 19 meeting, and out of an abundance of caution, the City Attorney recommended that the Planning Commission not make a final recommendation on this matter and that it be continued to its next meeting. The Planning Commission indicated that its recommendation to the Council would be to adopt the SEIR and approve the project and conditions of approval and to continue the matter to the consent calendar of the July 3, 2008 meeting. The agenda description for this meeting has been clarified.

## STAFF COMMENTS

At the last meeting, there was a lengthy discussion on the potential geotechnical and hydrological impacts of the project by City staff and consultants, the applicant's project team, the public, and the Planning Commission. Based on this discussion and after consultation with the City Attorney and City Engineer, staff is proposing that several of the mitigation measures and/or conditions of approval be revised to provide clarification on intent, scope, and timing. These revisions do not alter the level of significance of potential impacts or otherwise alter the project as previously reviewed by the Planning Commisison. The following table shows the original condition of approval (COA) and mitigation measure (MM) and revision.

| Original COA/MM | Revised COA/MM |
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| 37. Mitigation Measure 12: The City shall review and approve both the project drainage plan and the area-wide drainage system to determine their adequacy to accommodate the 100-year event. The stormwater control plan shall meet the requirements of the City's stormwater pollution prevention plan and the Contra Costa County Clean Water Program. Prior to approval of an improvement plan or issuance of a grading permit, whichever occurs first, the applicant shall submit to the City Engineering Services Manager a final hydrology and hydraulic analysis of the existing storm drain system to its junction with Upper Happy Valley Road to demonstrate the storm drain system's ability to accommodate the 100-year storm event. Any deficiencies shall be corrected as depicted in the final hydrology and hydraulic analysis to be approved by the City Engineering Services Manager. The final hydrology and hydraulic analysis shall demonstrate, to the satisfaction of the City Engineering Services Manager, that the project meets the following performance criteria including but not limited to:<br>a. Post-project peak run-off has been detained/retained onsite, and<br>b. That detention systems have been constructed to handle adequately the 10- and 100-year storm runoff from buildout of the site. If the systems are determined to be inadequately sized, the systems shall be expanded to provide for adequate detention and to maintain peak discharge at or below the discharge/ runoff conditions documented in the FEIR. | 37. Mitigation Measure 12: The City shall review and approve the project drainage plan to determine its adequacy to accommodate the 10-year event. The stormwater control plan shall meet the requirements of the City's stormwater pollution prevention plan and the Contra Costa County Clean Water Program. Prior to approval of an improvement plan or issuance of a grading permit, whichever occurs first, the applicant shall submit to the City Engineering Services Manager a final hydrology and hydraulic analysis of the existing storm drain system to its discharge to Happy Valley Creek. The final hydrology and hydraulic analysis shall demonstrate, to the satisfaction of the City Engineering Services Manager, that the project meets the following performance criteria including but not limited to:<br>a. Post-project peak run-off has been detained/retained onsite, and<br>b. That detention systems have been constructed to handle adequately the 10-year storm runoff from buildout of the site. If the systems are determined to be inadequately sized, the systems shall be expanded to provide for adequate detention and to maintain peak discharge at or below the discharge/runoff conditions documented in the FEIR.<br><br>*The City Engineer suggested that this COA/MM be revised to clarify the requirement that the project drainage system be designed such that project run-off be detained on-site and that it accommodate the 10-year storm event. The stormwater design standard in Contra Costa County for projects less than one square mile in size is the 10-year event only.* |
| 38. Mitigation Measure 10. Prior to approval of an improvement plan or issuance of a grading permit, whichever occurs first, the applicant shall submit to the City Engineer a final hydrology and hydraulic report analyzing the project drainage from Parcel B to its discharge to the creek north of Parcel B (unnamed tributary to Lauterwasser Creek). Any impacts or deficiencies shall be mitigated as part of the subdivision improvements, including but not limited to the detention basin proposed to mitigate the existing drainage condition and capture runoff from the proposed development. The final hydrology and hydraulic analysis shall demonstrate, to the satisfaction of the City Engineering Services Manager that the project meets the following performance criteria | 38. Mitigation Measure 10. Prior to approval of an improvement plan or issuance of a grading permit, whichever occurs first, the applicant shall submit to the City Engineer a final hydrology and hydraulic report analyzing the project drainage from Parcel B to its discharge to the creek north of Parcel B (unnamed tributary to Lauterwasser Creek). Any impacts or deficiencies shall be mitigated as part of the subdivision improvements, including but not limited to the detention basin proposed to mitigate the existing drainage condition and capture runoff from the proposed development. The final hydrology and hydraulic analysis shall demonstrate, to the satisfaction of the City Engineering Services Manager that the project meets the following performance criteria |

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| including but not limited to:<br>a. Post-project run-off shall be maintained at or below the discharge/runoff conditions documented in the Final EIR,<br>b. Post-project peak run-off has been detained/retained onsite,<br>c. That detention systems have been constructed to handle adequately the 10- and 100-year storm runoff from buildout of the site. If the systems are determined to be inadequately sized, the systems shall be expanded to provide for adequate detention and to maintain peak discharge at, below or equal to existing discharge/runoff conditions… | including but not limited to:<br>a. Post-project run-off shall be maintained at or below the discharge/runoff conditions documented in the Final EIR,<br>b. Post-project peak run-off has been detained/retained onsite,<br>c. That detention systems have been constructed to handle adequately the 10- ~~and 100-~~year storm runoff from buildout of the site. If the systems are determined to be inadequately sized, the systems shall be expanded to provide for adequate detention and to maintain peak discharge at, below or equal to existing discharge/runoff conditions… |
| 42. Mitigation Measure 5. The two active landslides on the site shall be repaired. These slides can be repaired by conventional removal and recompaction operations. All landslide repairs and remedial grading shall implement the recommendations of the geotechnical engineer, Purcell, Rhoades & Associates, as contained in the Geotechnical Study Update, June 1, 2006 and Supplemental Investigation Report, July 26, 2007, or as amended by the City Engineering Services Manager. Prior to submittal to the City Engineering Services Manager for review and approval, the plans shall be reviewed by the project geotechnical engineer to ensure that the recommendations and specifications have been included. It is recommended that additional field and subsurface investigations be conducted to analyze alternative repair scenarios. A possible scenario is to focus on providing a fill buttress for the access road and leave the thick colluvial deposit at the eastern limits of the site (Boring B-2) in place. The City Engineering Services Manager shall have final discretion in determining the scope and nature of any and all remedial work required.<br><br>During landslide and soil stabilization work, the project geotechnical engineer or engineering geologist, or their representative, must be present to observe the work performed and to perform whatever testing is necessary to properly evaluate the quality of the materials and their relative compaction and to ensure compliance with approved plans. | 42. Mitigation Measure 5. The two active landslides on the site shall be repaired. These slides can be repaired by conventional removal and recompaction operations. All landslide repairs and remedial grading shall implement the recommendations of the geotechnical engineer, Purcell, Rhoades & Associates, as contained in the Geotechnical Study Update, June 1, 2006 and Supplemental Investigation Report, July 26, 2007, or as amended by the City Engineering Services Manager.<br><br>Additional field investigation and analysis shall be conducted to determine the final limit of remedial earthwork and to analyze alternative repair scenarios. A possible scenario is to focus on providing a fill buttress for the access road and leave the thick colluvial deposit at the eastern limits of the site (Boring B-2) in place.<br><br>The additional field investigations shall provide site specific recommendations for the buttress and shall include a design level plan with cross-sections to coordinate drain bench and subdrain elevations and flow directions. The scope and location of subsurface testing and related investigations shall be coordinated with the City Engineering Services Manager. The Engineering Services Manager shall have final discretion in determining the scope and nature of any and all remedial work required. Where appropriate, as determined by the City Engineer, improvements and environmental mitigation measures required by the conditions of approval and all other applicable conditions of approval shall be incorporated into improvement plans.<br><br>Prior to submittal of grading and improvement plans to the City Engineering Services Manager for review and approval, the plans shall be reviewed by the project geotechnical engineer to ensure that the recommendations and |

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| | specifications have been included.<br><br>During landslide and soil stabilization work, the project geotechnical engineer or engineering geologist, or their representative, must be present to observe the work performed and to perform whatever testing is necessary to properly evaluate the quality of the work and to ensure compliance with approved plans. |
| 69. Mitigation Measure 6: Additional field investigation and analysis shall be conducted for the siting of the building site on Parcel C. These additional field investigations shall provide site specific recommendations for the buttress at Parcel C and will include a design level plan with cross-sections to coordinate drain bench and subdrain elevations and flow directions. The scope and location of subsurface testing and related investigations shall be coordinated with the City Engineering Services Manager. Subsequent subsurface testing and related reports shall be subject to review and approval by the City Engineering Services Manager. | *This mitigation measure is redundant and confusing. It requires additional field investigations to determine the final limit of remedial earthwork to be included in grading and improvement plans. Remedial earthwork must be conducted to stabilize the access road to Parcel C and not necessarily the building site. This mitigation measure has been merged with COA#42/MM #5.*<br><br>*Additional geotechnical studies will have to be conducted prior to submittal of the house location and plans for all the homesites including Parcel C as required by COA #70/MM #7.* |
| 70. Mitigation Measure 7: Prior to submittal of design review and hillside development permit applications for the individual homesites, and in conjunction with Mitigation Measure 6, design-level subsurface testing and investigations shall be conducted. The scope and location of subsurface testing and related investigations shall be coordinated with the City Engineering Services Manager. Subsequent subsurface testing and related reports shall be subject to review and approval by the Engineering Services Manager. The Engineering Services Manager shall have final discretion in determining the scope and nature of any and all remedial work required. | 70. Mitigation Measure 7: Prior to submittal of design review and hillside development permit applications for the individual homesites, design-level subsurface testing and investigations shall be conducted to determine design parameters for house foundations and improvements. |
| 45. Mitigation Measure 8: The project applicant shall conduct an investigation of the existing landslide underlying Happy Valley Road in the northeastern corner of the project site. The study shall determine the extent to which the proposed project would affect landslide activity in this area, and identify any necessary repairs required by project impacts. The results of this study shall be reflected in the plans to be reviewed by the project geotechnical engineer, prior to review and approval by the City Engineering Services Manager. The Engineering Services Manager shall have final discretion in determining the scope and nature of any and all remedial work required. | *This is a mitigation measure from the 1987 final EIR, updated to add the text about the Engineering Services Manager. According to the Engineering Services Manager, this mitigation measure is no longer necessary. This mitigation measure was based on the assumption that the landslide underlying Happy Valley Road extends into the eastern portion of Parcel A. Based on the updated geotechnical studies and peer review by Kropp & Associates, a landslide feature is not likely present at this location. The test pits did not identify slide debris, and if present, this slide would likely be a shallow feature exhibiting clear indications of slide debris. [Kropp, April 26, 2007, pg. 3] It should also be noted, that when this mitigation measure was formulated, the building site for Parcel A was located in the eastern portion of the parcel and has now been moved farther west.* |

These changes will be documented in the staff report to the City Council and in the final SEIR as errata or revisions. Conditions of approval and mitigation measures will be renumbered as applicable. As required by CEQA, staff will prepare a mitigation monitoring and reporting program for review and approval by the City Council.

## RECOMMENDATION

Staff recommends that the Planning Commission forward a recommendation to the City Council to:

1. Adopt the supplement to an environmental impact report and mitigation measures contained therein as modified in the Planning Commission staff report dated July 3, 2008; and

2. Approve MS504-87CCII and the conditions of approval as modified in the Planning Commission staff report dated July 3, 2008.

## Sinnette, Christine

**From:** wcp94111@yahoo.com
**Sent:** Wednesday, July 02, 2008 12:41 AM
**To:** Sinnette, Christine
**Cc:** paul seidelman; ed shaffer; peter colby
**Subject:** Re: Leamy Planning Commission Hearing

Dear Planning Commission,

I will be unable to attend the Thursday meeting, but I wanted to comment that I find your version of an Environmental Impact Report to be illogical. The whole concept of that process, which has not been adhered to, is that the environmental impacts of a project are as fully understood as practical and the mitigation is developed and agreed upon ahead of time and in a way to minimize the Impact on neighbors. The idea that you can approve this project before the down hole logging is done and the extent of the slide is as fully understood as reasonable is something I can not understand. Mr Kropp testified that the science of logging is quite advanced and doing it would allow a working plan to be developed. Instead you want us to agree to approve the project before that exploratory work is done and trust that the combined efforts of the City engineer and his consultants will protect us as the slide is openned up. We are left with no alternative but to wait for our houses to settle, our banks to erode, our roads to fail, and then to sue for our damages. Who is responsible for the trauma we could endure?

Mr Leamy stands to realize over $10 million in profits on this subdivision after Parcel B is split up. Why would you not require him to do the logging, develop a completed plan for slide repair and drainage, and allow us with Mr. Seidelman to agree that the plan is reasonable before the project is approved and started? That seems what the whole planning process is about. This would not cost much in relation to the total scope of the project and would make everyone feel better about the process and outcome.

Sincerely,

Walt Price
4115 Happy Valley Road